

REGISTRATION NUMBER

42600207162027

AGREEMENT NUMBER

06-55520

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

(Also referred to as CDHS, DHS, or the State)

California Department of Health Services

CONTRACTOR'S NAME

(Also referred to as Contractor)

McKesson Health Solutions, LLC

2. The term of this Agreement is: February 1, 2007 through August 31, 2010

Work will not begin until contract approval is received from DGS

3. The maximum amount of this Agreement is: \$ 12,000,000

up to Twelve Million Dollars

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	2 pages
Exhibit A, Attachment I – Scope of Work - Contract Performance	18 pages
Exhibit B – Payment Provisions	3 pages
Exhibit B, Attachment I – Special Payment Provisions	5 pages
Exhibit C* – General Terms and Conditions	GTC 306
Exhibit D(F) – Special Terms and Conditions (Attached hereto as part of this agreement)	26 pages
Notwithstanding provisions 5, 6, 15, 16, 22, 23 and 30 which do not apply to this agreement	
Exhibit E – Additional Provisions	20 pages
Exhibit E, Attachment I – Location of Beneficiaries	1 page
Exhibit F – Contractor's Release	1 page
Exhibit G – HIPAA Business Associate Addendum	7 pages
Exhibit H – Glossary (appendix 1 of the RFP)	6 pages

Items shown above with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard+Language>.

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

**CONTRACTOR**

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

McKesson Health Solutions, LLC

BY (Authorized Signature)

*[Signature]*

DATE SIGNED (Do not type)

JAN 12, 2007

PRINTED NAME AND TITLE OF PERSON SIGNING

Emad Rizk, MD - President

ADDRESS

335 Interlocken Parkway, Broomfield, CO 80021

**STATE OF CALIFORNIA**

AGENCY NAME

California Department of Health Services

BY (Authorized Signature)

*[Signature]*

DATE SIGNED (Do not type)

1/17/07

PRINTED NAME AND TITLE OF PERSON SIGNING

an Chinn, Chief, Contracts and Purchasing Services Section

ADDRESS

1501 Capitol Avenue, Suite 71.2101, MS 1403, P.O. Box 997413  
 Sacramento, CA 95899-7413

California Department of  
 General Services Use Only

APPROVED  
 FEB - 5 2007  
 CALIFORNIA DEPARTMENT OF GENERAL SERVICES

Exempt per:

00 00000

**Exhibit A**  
**Scope of Work**

**1. Service Overview**

Contractor agrees to provide to the California Department of Health Services (CDHS) the services described herein.

The Contractor shall develop, test, implement and maintain a Disease Management Pilot Program (DMPP). Disease Management (DM) services will be provided to seniors and persons with disabilities (SPD) (aka aged, blind, and disabled (ABD)) and individuals age 22 and older with one or more of the following chronic diseases: atherosclerotic disease syndrome, congestive heart failure, diabetes, asthma, coronary artery disease, or chronic obstructive pulmonary disease.

The Contractor shall be responsible for, but not limited to, providing the following services:

- a. Contract Administration
- b. Management Information Systems (MIS)
- c. Quality Improvement System (QIS)
- d. Utilization Monitoring (UM)
- e. Member Services
  - 1) Member Rights
  - 2) Marketing
  - 3) Scope of Services
  - 4) Access and Availability
- f. Provider Services
- g. Implementation Plan and Deliverables

**2. Service Location**

DMPP services shall be delivered to eligible beneficiaries that reside in portions of Los Angeles county and all of Alameda county. See Exhibit E, Attachment I for the specific service locations within Los Angeles county.

**3. Service Hours**

The health advice line will be operated 24 hours a day, 7 days a week. All other services shall be provided during normal Contractor working hours, Monday through Friday, excluding national holidays.

**4. Project Representatives**

A. The project representatives during the term of this agreement will be:

**Exhibit A**  
**Scope of Work**

<b>Department of Health Services</b> CDHS Contract Manager – Grant Gassman Telephone: (916) 552-9797 Fax: (916) 552-9602 E-mail: <a href="mailto:GGassman@dhs.ca.gov">GGassman@dhs.ca.gov</a>	<b>Contractor</b> McKesson Health Solutions, LLC Telephone: (303) 664-6429 Fax: (303) 466-5949 E-mail: <a href="mailto:william.williams@McKesson.com">william.williams@McKesson.com</a>
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B. Direct all inquiries to:

<b>Department of Health Services</b> Professional Services Unit Attention: Gail Meeks Mail Station Code 4601 1501 Capitol Avenue P.O. Box 997417 Sacramento, CA 95899-7417  Telephone: (916) 552-9797 Fax: (916) 552-9602 E-mail: <a href="mailto:GMeeks@dhs.ca.gov">GMeeks@dhs.ca.gov</a>	<b>Contractor</b> McKesson Health Solutions, LLC Attention: Kevin Ryan 335 Inerlocken Parkway Broomfield, CO 80021  Telephone: (303) 664-6429 Fax: (303) 466-5949 E-mail: <a href="mailto:Kevin.Ryan@McKesson.com">Kevin.Ryan@McKesson.com</a>
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C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

**5. Services to be Performed**

The Contractor shall perform the services described in the attached Exhibit A, Attachment 1, entitled, Scope of Work – Contract Performance.

**Exhibit A, Attachment I**  
**Scope of Work - Contract Performance**

**A. Contract Administration**

Contractor shall maintain the organizational and administrative capabilities to perform its duties and responsibilities under the Contract. This will include, at a minimum, the following:

**1. Organization and Staffing**

Contractor shall maintain the organization and staffing for implementing and operating the Contract. Contractor shall ensure the following:

- a. Organization has an accountable governing body;
- b. Staffing in medical and other health services, and in fiscal and administrative services, is sufficient to result in the effective conduct of the organization's business; and
- c. Written procedures for the conduct of the business of the organization, which provides effective controls.

**2. Medical Oversight**

- a. Contractor shall ensure that medical decisions, including those by subcontractors, are not unduly influenced by fiscal and administrative management.
- b. Contractor shall maintain a physician as Medical Director who is licensed in California but is not required to be located in California and whose responsibilities shall include, but not be limited to, the following:
  - 1) Ensuring that medical decisions are rendered by qualified medical personnel;
  - 2) Ensuring that medical decisions are not influenced by fiscal or administrative management considerations;
  - 3) Ensuring that medical protocols and rules of conduct for medical personnel are followed;
  - 4) Resolving disputes related to the Member and provider services; and,
  - 5) Direct involvement in the implementation of Quality Improvement activities.
- c. Contractor shall report to CDHS any changes in the status of the Medical Director within ten (10) calendar days.

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3. Reporting Requirements

Many of the data elements required below may be combined into grouped reports of related elements. Additionally, the Contractor may use electronic spreadsheets to track and report necessary data elements. All reports provided to CDHS must be user friendly (easily viewable and printable) and not contain excessive amounts of unsolicited data. The Contractor will submit the following reports:

a. Monthly Reports

The Contractor shall send monthly reports to CDHS that include the following information. CDHS must receive these monthly reports by the tenth calendar day of each month.

- 1) Identification of potential Members, including but not limited to the listing provided by CDHS, and the method and date of initial contact with the potential Member;
- 2) Identification of Members enrolled in the DMPP, or the date the Potential Member opted-out;
- 3) Identification of Provider/Primary Care Provider (PCP) providing DM services to DM Members;
- 4) Identification of individual Member 60-day assessment due dates and completion dates;
- 5) Identification of individual Member 90-day Individual Treatment Plan (ITP) deadline date and ITP initiation date;
- 6) Identification of Members who have been disenrolled, disenrollment date and the reasons for disenrollment. (This report is intended to report disenrollments after they have occurred. All Contractor requests for disenrollment must be approved by CDHS through a separate process. See Member Services - Scope of Services - Enrollment/Disenrollment below);
- 7) Health advice line activity, including the number and type of calls; and
- 8) Other reports to be determined by CDHS.

b. Quarterly Reports

The Contractor shall send quarterly reports to CDHS that include the following information. CDHS must receive these quarterly reports within thirty (30) calendar days after the end of the quarter.

- 1) Provider training;

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- 2) Incidence of sentinel events and mortality; and
- 3) Other reports to be determined by CDHS.

c. Semi-Annual Reports

The Contractor shall send semi-annual reports to CDHS that include the following information. CDHS must receive semi-annual reports within thirty (30) calendar days after the end of each 6-month period:

- 1) Member status reports and
- 2) Other reports to be determined by CDHS.

d. Annual Report

The Contractor shall send annual reports to CDHS that including the following information. CDHS must receive these annual reports within thirty (30) calendar days after the end of each 12-month period:

- 1) Quality improvement summary;
- 2) Contractor operational self-assessment; and
- 3) Other reports to be determined by CDHS.

**B. MANAGEMENT INFORMATION SYSTEMS**

1. Management Information System

Contractor's Management Information System (MIS) shall have processes that support the interactions between Financial; Member and Provider; Eligibility; Encounter Claims; Quality Improvement; Utilization Monitoring and Report Generation subsystems. The interactions of the subsystems must be compatible, efficient and successful. Contractor shall develop and maintain a MIS that provides, at a minimum:

- a. CDHS reporting requirements as specified in Provision A.3;
- b. All DMPP eligibility data;
- c. Information on Members enrolled in the DMPP, such as, Member assessments, status, case management activities, and outcomes;
- d. Financial information as specified in Exhibit E, Additional Provisions; and
- e. Drug utilization data sufficient to identify under and/or over utilization of medication.

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2. MIS/Data Correspondence
  3. Health Insurance Portability and Accountability Act of 1996 (HIPPA)
 

Contractor shall comply with Exhibit G - Health Insurance Portability and Accountability Act of 1996 (HIPPA) requirements and all federal and State regulations promulgated from this Act, as they become effective.

Upon receipt of written notice by CDHS of any problems related to the submittal of data to CDHS, or any changes or clarifications related to Contractor's MIS system, Contractor shall submit to CDHS a Corrective Action Plan with measurable benchmarks within thirty (30) calendar days from the date of the postmark of CDHS' written notice to Contractor. Within thirty (30) calendar days of CDHS' receipt of Contractor's Corrective Action Plan, CDHS shall approve the Corrective Action Plan or request revisions. Within fifteen (15) calendar days after receipt of a request for revisions to the Corrective Action Plan, Contractor shall submit a revised Corrective Action Plan for CDHS approval.

C. QUALITY IMPROVEMENT SYSTEM

1. General Requirements
 

Contractor shall implement an effective Quality Improvement System (QIS) in accordance with nationally recognized disease management accrediting standards. Contractor shall monitor and evaluate all services delivered to Members to ensure contract requirements are met and to evaluate quality of DM services rendered. Contractor shall be accountable to address any needed improvements in meeting contract requirements, DM goals, and improvements in quality of DM services regardless of the number of contracting and subcontracting layers between the Contractor and Member. This provision does not create a cause of action against the Contractor on behalf of a DMPF Member for malpractice committed by a Subcontractor.
2. Written Description
 

Contractor shall develop and implement a written description of its QIS that shall include the following:

  - a. Organizational commitment to the delivery of quality DM services as evidenced by goals and objectives, which are approved by Contractor's governing body and periodically evaluated and updated;
  - b. System for provider review of QIS findings, which at a minimum, demonstrates provider and other appropriate professional involvement and includes provisions for providing feedback to staff and providers regarding QIS study outcomes; and

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- c. Activities designed to assure the provision of case management and coordination of services.
3. Delegation of Quality Improvement Activities
- a. Contractor is accountable for all quality improvement functions and responsibilities (e.g. Utilization Monitoring, reports, and outcome measures) that are delegated to Subcontractor(s). If Contractor delegates quality improvement functions, Contractor and delegated entity (Subcontractor) shall include in their Subcontract, at a minimum:
    - 1) Quality improvement responsibilities, and specific delegated functions and activities of the Contractor and Subcontractor;
    - 2) Contractor's oversight, monitoring, and evaluation processes and Subcontractor's agreement to such processes;
    - 3) Contractor's reporting requirements and approval processes. The agreement shall include Subcontractor's responsibility to report findings and actions taken as a result of the quality improvement activities at least quarterly; and
    - 4) Contractor's action/remedies if Subcontractor's obligations are not met.
  - b. Contractor shall maintain a system to ensure accountability for delegated quality improvement activities, that at a minimum:
    - 1) Evaluates, on an annual basis, the Subcontractor's ability to perform the delegated activities including an initial review to assure that the Subcontractor has the administrative capacity, task, experience, and budgetary resources to fulfill its responsibilities;
    - 2) Ensures Subcontractor meets standards set forth by Contractor and CDHS; and
    - 3) Includes the continuous monitoring, evaluation and approval of the delegated functions.
4. Quality Improvement Annual Report
- Contractor shall develop a quality improvement report for submission to CDHS on an annual basis. The annual report shall include:
- a. A comprehensive assessment of the quality improvement activities undertaken and an evaluation of areas of success and needed improvements in services rendered within the quality improvement program, including but not limited to, the collection of aggregate data on utilization; the review of quality of services rendered; clinical outcome measures as listed in Appendix 4; and outcomes/findings from Quality Improvement projects.

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- b. Copies of all final reports of non-governmental accrediting agencies (e.g. JCAHO, NCQA, URAC) relevant to the Contractor's Medi-Cal line of business, including accreditation status and any deficiencies noted. Include the corrective action plan developed to address noted deficiencies.
- c. An assessment of subcontractor's performance of delegated quality improvement activities.

5. **Provider Participation**

Contractor shall maintain and implement appropriate procedures to keep providers serving DM Members informed of the written QIS, its activities, and outcomes.

6. **Monitoring and Evaluation**

CDHS will arrange for an independent assessment/evaluation of the DMPP. The measures to be evaluated will include, but not be limited to, cost effectiveness and process and outcome measures for clinical, financial, humanistic, program implementation and plan operation variables. The evaluation shall estimate the projected savings, if any, in the budgets of State and Local governments if a DM benefit was expanded statewide. The Contractor will cooperate with the independent assessment/evaluation process.

**D. UTILIZATION MONITORING**

Utilization Monitoring (UM) allows an organization to monitor the provision of services. Reports and data on service utilization can provide the Contractor with vital information about the delivery of services. Utilization data can determine where health care dollars are being spent, which health care practitioners are providing the most appropriate health care, where Medi-Cal beneficiaries seem to prefer to access health care services, what services are being accessed, and what services may be utilized or delivered inappropriately. The DMPP emphasizes utilization monitoring as an important tool in detecting areas that need improvement.

Contractor shall develop and implement strategies based on utilization monitoring to minimize under/over utilization of emergency department services, acute care hospitalizations, specialist services, medication and other goods and services. At a minimum, the Contractor will track and trend the following:

1. Utilization per member per month in total, by diagnosis and type of service.
2. Gaps in care (recommended treatment/preventive care versus actual treatment).
3. Inappropriate use of medications (per applicable clinical guidelines).

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Contractor will not have the authority to approve, modify or deny services to Members. All Treatment Authorization Requests (TARs) will be processed through the existing Medi-Cal prior authorization system.

**E. MEMBER SERVICES – MEMBERS RIGHTS**

**1. Member Rights and Responsibilities**

Contractor shall develop, implement and maintain written policies that address Member rights and responsibilities and shall communicate these to its Members.

- a. Contractor's written policies regarding Member rights shall include the following:
- 1) To be treated with respect, giving due consideration to the Member's right to privacy and the need to maintain confidentiality of the Member's medical information;
  - 2) CDHS approved policy for resolving disputes;
  - 3) To be provided with information about the organization and its services;
  - 4) To receive oral interpretation services for identified threshold languages as listed in Appendix 1-Glossary;
  - 5) To have access to, and when legally appropriate, receive copies of, amend or correct their Member Record;
  - 6) To disenroll at any time;
  - 7) To receive written materials in alternative formats, including Braille, large size print, and audio format within 14 days of request; and
  - 8) To be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- b. Contractor's written policy regarding Member responsibilities shall include, but not limited to, the following:
- 1) Providing accurate information to staff;
  - 2) Treating staff with respect;
  - 3) Cooperating with case management processes;
  - 4) Participating in the development and the implementation of their ITP; and
  - 5) Cooperating with their health care providers.

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- c. Contractor shall implement and maintain policies and procedures to ensure the Member's right to confidentiality of medical information.
  - 1) Contractor shall implement and maintain procedures that guard against disclosure of confidential information to unauthorized persons.
  - 2) Contractor shall inform Members of their right to confidentiality and Contractor shall obtain Member's consent prior to release of confidential information, unless such authorization is not required.
- d. Contractor shall maintain the capability to provide Member services to DMPP Members through sufficient assigned and knowledgeable staff.
- e. Contractor shall ensure Member services staff is trained on all contractually required Member service functions including, policies, procedures, and scope of benefits of this Contract.
- f. Contractor shall provide all new DMPP Members with written Member information. In addition, the Contractor shall provide potential Members with written Member information upon request.
  - 1) Contractor shall distribute the Member information no later than seven (7) calendar days after the effective date of the Member's Enrollment. Contractor shall revise this information, and distribute it annually to each Member.
  - 2) Contractor shall ensure that all written Member information is provided to Members at a sixth grade reading level or as determined appropriate by existing Medi-Cal standards.
  - 3) The written member informing materials shall be translated into the identified threshold languages (Provision H - Member Services, Access and Availability, Linguistic Services).
  - 4) The written member informing materials shall be provided in alternative formats, including Braille, large size print, and audio format, within 14 days of request.
- g. Contractor shall develop and provide each Member a Member Services Guide that constitutes a fair disclosure of the provisions of the covered DM services. The Member Services Guide shall be submitted to CDHS for review and subsequent approval prior to distribution to Members. The Member Services Guide shall include the following information:
  - 1) Description of the DMPP covered services and benefits and how to access them;
  - 2) The importance of establishing a medical home and information on how to contact the DMO for assistance in this process;

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- 3) Information explaining the importance and value of scheduling and keeping appointments;
- 4) Procedures for obtaining emergency health care;
- 5) Procedures for obtaining any transportation services available through the Medi-Cal program, and how to obtain such services. Include a description of both medical and non-medical transportation services and the conditions under which non-medical transportation is available;
- 6) The causes for which a Member shall lose entitlement to receive services under this Contract as stipulated in Provision G - Member Services – Scope of Services, Enrollment/Disenrollment;
- 7) Procedures for Disenrollment, including an explanation of the Member's right to disenroll without cause at any time;
- 8) Information on the availability of, and procedures for obtaining, services at Federally Qualified Health Clinics (FQHC) and Rural Health Clinics (RHC); and
- 9) Any other information determined by CDHS to be essential for the proper receipt of DM services.

2. Member's Records

Contractor shall develop, implement and maintain written procedures pertaining to Member's records that address the following areas:

- a. Collection, processing, maintenance, storage, retrieval, identification, and distribution;
- b. Ensuring that Member's records are protected and confidential in accordance with all Federal and State laws;
- c. Release of information; and
- d. Ensuring the maintenance of Member's records in a legible, current, detailed, organized and comprehensive manner (records may be electronic or paper copy).

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**F. MEMBER SERVICES - MARKETING**

**1. Marketing Plan**

Contractor shall develop a marketing plan as specified below. The marketing plan shall be specific to the DM Program only. Contractor shall implement and maintain the marketing plan only after approval from CDHS. Contractor shall ensure that the marketing plan, procedures, and materials are accurate and do not mislead, confuse, or defraud.

Contractor shall submit a marketing plan to CDHS for review and approval on an annual basis. The marketing plan, whether new, revised, or updated, shall describe the Contractor's current marketing procedures, activities, and methods. No marketing activity shall occur until the marketing plan has been approved by CDHS.

The marketing plan shall have a table of contents section that divides the marketing plan into chapters and sections. Each page shall be dated and numbered so chapters, sections, or pages when revised, can be easily identified and replaced with revised submissions.

Contractor's marketing plan shall contain the following items and exhibits:

- a. Mission Statement or Statement of Purpose for the marketing plan;
- b. Organizational chart and narrative description; and

The organizational chart shall include the marketing director's name, address, telephone and facsimile number and key staff positions.

The description shall explain how the Contractor's internal marketing department operates, identifying key staff positions, roles and responsibilities, and reporting relationships.

- c. Marketing Locations

All sites for proposed marketing activities such as annual health fairs, and community events, in which the Contractor proposes to participate, shall be listed.

- d. Marketing Activities

All marketing methods and activities Contractor expects to use, or participate in, shall be described.

Contractor shall include a letter or other document that verifies cooperation or agreement between the Contractor and an organization to undertake a marketing activity together and certify or otherwise demonstrate that permission for use of the marketing activity/event site has been granted.

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e. **Marketing Materials**

Copies of all marketing materials the Contractor will use for both English and non-English speaking populations shall be included.

f. **Marketing Distribution Methods**

A description of the methods the Contractor will use for distributing marketing materials shall be included.

2. **Miscellaneous**

CDHS reserves the right to review, approve and/or deny all marketing activities. In addition, CDHS reserves the right to request additional documentation as needed to assess the Contractor's marketing program.

**G. MEMBER SERVICES - SCOPE OF SERVICES**

Contractor shall provide or arrange for all DM covered services to DMPP Members. Contractor will develop policies and procedures to provide administrative case management services, which include outreach and assessment; enrollment/disenrollment; case management; health advice line; assistance in finding a medical home; and member education. Contractor will assist Members with referrals to appropriate medical and community services, including specialty care.

1. **Outreach and Assessment**

a. **Outreach**

Contractor will develop policies and procedures for outreach to Members, providers and community resources regarding program information and operation.

b. **Assessment**

Members enrolled in the DMPP must be assessed initially and periodically, not less than annually, for information about their medical/health condition including, history, psycho-social status, medication, and service needs. The assessment shall form the basis for developing an ITP and determine the type and intensity of interventions that are appropriate. The Member Assessment will be completed within sixty (60) days of enrollment, and updated at periodic intervals, not less than annually, based on risk level. Assessment information may be compiled from various sources, including but not limited to, claims data, medical record review or survey methodology but shall not be obtained through the provision of face-to-face direct clinical medical services from the DMO.

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**2. Enrollment/Disenrollment**

CDHS will supply the Contractor with a monthly list of potential Members. The contractor must make a good faith effort to contact all potential Members with information regarding the DMPP benefits, services and enrollment/disenrollment procedures. Once the list is exhausted, CDHS will supply additional lists as necessary. Contractor shall provide written notice of eligibility to potential Members within five (5) working days of receiving the list from CDHS. If a potential Member chooses not to be enrolled, they will have thirty (30) days to opt-out of the program from the postmark of the initial eligibility contact letter. At the beginning of the first month following the end of the 30-day opt-out period, the potential Members who have not opted-out will be enrolled as Members.

The Contractor shall enroll a minimum of 250 DMPP Members in each of the six disease categories in each county in each year of the operations period of the contract. The purpose of this requirement is to ensure that there is a statistically valid sample size to evaluate for each disease in each pilot county. There are no enrollment distribution mandates beyond this minimum enrollment requirement. The minimum enrollment requirements will be subject to availability of sufficient numbers of potential Members in the pilot areas and will be subject to CDHS approval which shall not be unreasonably withheld.

The size of the initial enrollment list and any additional time allowed for the initial enrollment is subject to CDHS approval which shall not be unreasonably withheld. In addition, enrollment may only take place during the Operations Period.

The DMPP will provide disease management services to those persons who meet all of the following requirements:

- a. Are Medi-Cal eligible;
- b. Are 22 years of age or older;
- c. Have a primary or secondary diagnosis of:
  1. Artherosclerotic disease syndrome;
  2. Congestive heart failure (CHF);
  3. Coronary artery disease (CAD);
  4. Diabetes mellitus (Diabetes);
  5. Asthma; or
  6. Chronic obstructive pulmonary disease (COPD)

All Medi-Cal beneficiaries who meet the qualifications noted above will be considered eligible for the DMPP, except those who:

- Have restricted/emergency only Medi-Cal;
- Are Medicare eligible;
- Have other insurance that provides comparable DM services (e.g., Medi-Cal Managed Care);
- Reside in nursing facilities (NF);
- Reside in all levels of Intermediate Care Facilities for the Developmentally Disabled (ICF/DD);
- Have a Medi-Cal eligibility period that is less than 3 months;
- Have a Medi-Cal eligibility period that is only retroactive;
- Are eligible as medically needy;

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- Are Native American;
- Participate in Medicaid waiver programs, including Home and Community Based, Freedom of Choice and Research and Demonstration waivers, but not including the Hospital Financing/Mental Health waiver;
- Receive comparable case management services from another program such as Medical Case Management;
- Have a primary or secondary diagnosis of Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome; or
- Receive services related to transplants, cancer, severe trauma, end stage renal disease, and/or hospice.

As part of the enrollment process noted below, CDHS will screen out Medi-Cal beneficiaries who are not eligible for the program by generating a list of potential Members according to the appropriate aid codes and ICD-9 codes.

Members shall be admitted to the DMPP based on the quotas as described in G.2 above. Member quotas will be limited by the availability of funding and statistically valid sample for each disease condition and adequate geographic distribution. If membership exceeds DMPP availability, CDHS will develop and implement a process for enrollment through a waiting list.

A Member who, during the time of DMPP membership, enters a nursing facility for a short-term stay of thirty (30) days or less will not be disenrolled except at the Member's request. A Member who, after enrolling in the DMPP, begins receiving treatment for transplants, cancer, end stage renal disease, or severe trauma, will only be disenrolled from the DMPP at the Member's request or in cases where services are duplicated.

The Contractor shall complete a Member Assessment within sixty (60) days from the date of enrollment. Through the Member assessment, the Contractor shall determine the Member's health status and include confirmation that the Member is qualified for the program (i.e. diagnosed with one of the identified disease conditions). If the Contractor determines that the Member is not medically qualified for the program, as noted above, the Contractor shall coordinate disenrollment with the Contract Administrator. CDHS shall retain control of disenrollment from the DMPP.

Within seven (7) business days of receiving a request for disenrollment of a Member or potential Member from the Contractor or beneficiary, CDHS will make a determination and notify the Contractor. Subsequently, the Contractor shall notify the Member or potential Member within seven (7) business days of the disenrollment or denial of a request for enrollment with a Notice containing, at a minimum, the following information:

- a. Action taken by the Contractor; and
- b. Reason for the action taken.

Members will have the option to end their enrollment each month. To request disenrollment, Members shall notify the Contractor verbally or in writing. The

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Contractor shall notify CDHS within two (2) business days of the Member's request. Disenrollment will occur on the first day of the month following the month the request was made. Former Members who disenrolled voluntarily may reenroll at any time by making a verbal or written request to the Contractor. Reenrollment will take place on the first day of the month following the month the reenrollment request is made.

**3. Disease/Case Management**

The Contractor will adopt DM standards to improve the health of Members by providing services based on evidence-based practice guidelines to include: promoting collaborative relationships with providers, providing Member and provider education, and employing reporting and feedback loops for decision making with providers and Members.

The Contractor will ensure continuity of care in collaboration with the provider/PCP by:

- a. Monitoring the referral and follow-up of Members in need of specialty care and routine health care services;
- b. Documentation of referral and follow-up services in Member's record;
- c. Documentation in Member's record of emergency medical encounters with the appropriate follow-up as medically indicated; and
- d. Documentation and follow-up in Member's record of planned health care services.

Disease/case management activities should include, but are not limited to the following:

- a. Medication management – The Contractor shall develop and implement policies and procedures for the following elements:
  - 1) Medication profiling;
  - 2) Medication monitoring;
  - 3) Feedback to provider/PCP and/or pharmacist; and
  - 4) Member and provider education.
- b. ITP - Based on the Member assessment, the Contractor shall assure and coordinate the development of the ITP, utilizing evidence-based practice guidelines, to be completed and in place within ninety (90) days of membership. The Member or the Member's designee, the provider/PCP and Case Manager should be actively involved in the development and periodic review of the ITP.

The ITP must also include specific provisions for periodic (not less than semi-annually) review and updates to the plan as appropriate. Intervals of periodic

**Exhibit A, Attachment I**  
**Scope of Work - Contract Performance**

review and ITP updates should be established based on the severity of the Member's condition.

Participants of the review should include, but not be limited to, the following:

- 1) Member;
  - 2) Case Manager;
  - 3) Provider/PCP; and
  - 4) Representatives providing services to the Member as identified in the ITP (e.g. nutritionist or psychiatrist).
- c. Coordination/Continuity of Care – Contractor shall develop and implement policies and procedures related to establishing relationships, developing referral processes, and sharing information with the provider/PCP, State, and Community agencies to enable Members to access needed services and ensure continuity of care.

The Contractor will establish and make available lines of communication to allow interaction between the Contractor, Member, and the provider/PCP.

- d. Staffing - At a minimum, the Case Manager will be a licensed registered nurse or other healthcare professional as defined in Section 4999.2 of the California Business and Professions Code. The Contractor shall also employ the services of a licensed psychiatrist, psychologist, or licensed/certified mental health specialists, as needed, to address the behavioral and/or mental health concerns of the Member.
- e. Member Advocacy – The ITP shall be developed and implemented to be Member-centered. The Contractor shall advocate on behalf of the member, as necessary, to ensure optimal care for the Member.
4. Health Advice Line

The Contractor must offer a twenty-four hour, seven days a week (24/7) toll-free health advice line staffed by health care professionals, as defined in California Business and Professions Code Section 4999.2. Operators of the advice line will provide general and personalized health care information (such as the DMPP Member's ITP, provider/PCP, accessing emergency services, and relevant utilization data). The advice line will also provide education and assistance for DMPP Members and/or their caregivers. This line must be operated in accordance with current managed care program rules for comparable advice lines, including provisions for interpreter services (Business and Professions Code Section 4999.2 and 4999.7 and Section 1348.8 of the Health and Safety Code).

**Exhibit A, Attachment I**  
**Scope of Work - Contract Performance**

The Contractor must develop and implement a timely method of communicating the Member telephone contact information with the Member's case manager and ensure the advice line is operated in an efficient and effective manner.

**5. Member Education**

- a. Contractor shall implement and maintain a health education system that includes programs, services, functions, and resources necessary to provide health education, health promotion and patient education for all Members.
- b. Contractor shall ensure the organized delivery of health education programs using educational strategies and methods that are appropriate for Members and effective in achieving behavioral change for improved health.
- c. Contractor shall ensure that health education materials are written at the sixth grade reading level and are culturally and linguistically appropriate for the intended audience (See Glossary – Threshold Language).
- d. Contractor shall maintain a health education system that provides educational interventions addressing the following health categories and topics:
  - 1) Appropriate use of health care services.
  - 2) Risk-reduction and healthy lifestyles.
  - 3) Self-care and management of health conditions.
- e. Contractor shall maintain health education policies and procedures, and standards and guidelines; conduct appropriate levels of program evaluation; and, monitor performance of providers that are contracted to deliver health education services to maximize effectiveness.
- f. Contractor shall periodically, not less than annually, review the health education system to ensure appropriate allocation of health education resources, and maintain documentation that demonstrates effective implementation of the health education requirements.

**H. MEMBER SERVICES - ACCESS AND AVAILABILITY**

**1. Access Requirements**

The Contractor shall establish accessibility standards, which include, but are not limited to, the following:

- a. Telephone Procedures

**Exhibit A, Attachment I**  
**Scope of Work - Contract Performance**

Contractor shall maintain procedures for triaging Member's telephone calls, providing telephone advice and accessing telephone interpreters.

- b. Contractor shall ensure that all non-English-speaking, or limited English proficient (LEP) DMPP Members receive 24-hour oral interpreter services, either through interpreters or telephone language services. Contractor shall arrange or provide, at minimum, the following linguistic services at no cost to the DMPP Members:
  - 1) Fully translated written informational materials, including but not limited to the Member Service Guide, enrollee information, welcome packets, marketing information, and form letters. Contractor shall provide translated written informing materials to all non-English speaking or LEP members that speak the identified threshold language (See Glossary – Threshold Language), upon request.
  - 2) Referrals to culturally and linguistically appropriate community service programs.
  - 3) Telecommunications Device for the Deaf (TDD).

**2. Changes in Availability or Location of DM Services**

- a. Contractor shall provide notification to CDHS sixty (60) calendar days prior to making any substantial change in the availability or location of services to be provided under this Contract. In the event of an emergency or other unforeseeable circumstances, Contractor shall provide notice of the emergency or other unforeseeable circumstance to CDHS as soon as possible.
- c. Contractor is not required to provide a service that it objects to on moral or religious grounds. If the service is disputed, the Contractor shall inform the Member of an alternate method of obtaining the service.

**I. PROVIDER SERVICES**

**1. Provider Education**

Contractor shall provide education to provider/PCP to include, but not be limited to, the following:

- a. Contractor shall provide training to all providers/PCP that are treating DMPP Members for a DM qualifying disease. Contractor shall ensure this training includes information on all Member rights, Member services, and the right to actively participate in health care decisions.
- b. Use of evidence-based practice guidelines.

**Exhibit A, Attachment I**  
**Scope of Work - Contract Performance**

- c. Resource tools developed by the Contractor to facilitate the use of evidence-based practice guidelines by the provider/PCP.
  - d. Evaluation and appropriate treatment of mental health issues.
  - e. Identification and utilization of community resources.
2. Provider Feedback

Contractor shall develop and implement system(s), which will provide information to the provider/PCP relating to Member's adherence to the ITP. Contractor shall employ feedback techniques to the provider/PCP to improve the quality and appropriateness of the care provided to the Member.

**J. IMPLEMENTATION PLAN AND DELIVERABLES**

The Implementation Plan and Deliverables section describes CDHS requirements for specific deliverables, activities, and timeframes that the Contractor must complete during the Implementation Period before beginning operations.

Once the Contract is awarded, the Contractor has fifteen (15) calendar days after its signs the Contract to submit a Workplan for each county that describes in detail how and when the Contractor will submit and complete the deliverables for the readiness review to CDHS. The Contractor's Workplan(s) will include a timetable to accomplish the activities to assure timely start-up of operations and contingency plan(s) in the event of implementation delays.

The Contractor's workplan(s) will identify all of the deliverables, milestones, and timeframes to achieve an orderly sequence of events that will lead to compliance with all contract requirements. CDHS will review and approve each workplan(s). However, Contractor shall not delay the submission of deliverables required in the workplan(s) while waiting for CDHS approval of previously submitted deliverables required by the workplan(s). Contractor will continue to submit deliverables based on the milestones and timeframes set forth in the approved CDHS workplan(s). In the event the Contractor fails to submit all deliverables in accordance with the milestones and timeframes in the approved CDHS workplan(s), CDHS may impose Liquidated Damages in accordance with Exhibit E - Additional Provisions.

The Implementation Period begins with the effective date of the Contract and extends to the beginning of the Operations Period (approximately 4 months after the effective date of the Contract). The Operations Period is the period of time beginning with the effective date of the first month of operations and continues through the last month of the services to the Members.

Upon successful completion of the Implementation Plan and Deliverables section requirements, CDHS will authorize, in writing, that the Contractor may begin the Operation Period. Phaseout requirements are identified in Exhibit E-Additional Provisions.

**Exhibit B**  
Budget Detail and Payment Provisions

**1. Invoicing and Payment**

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates and/or allowable costs specified herein.
- B. Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to:

Mr. Grant Gassman  
California Department of Health Services  
Medi-Cal Benefits Branch  
MS 4601  
P.O. Box 997413  
Sacramento, CA 95899-7413

- C. Invoices shall:
  - 1) Be prepared on Contractor letterhead. If invoices are not on preprinted letterhead, invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
  - 2) Bear the Contractor's name as shown on the agreement.
  - 3) Identify the billing and/or performance period covered by the invoice.
  - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by CDHS.
  - 5) Report expenses attributed to Disabled Veteran Business Enterprise (DVBE) subcontractors or DVBE suppliers at any tier (if any). This requirement only applies if the contractor identified DVBEs for participation during the selection or negotiation process.
  - 6) Provide Member enrollment report for the billing period.

- D. Rates Payable  
Contractor agrees to furnish all labor, transportation, equipment, materials and support services necessary for performance of the Scope of Work for the all inclusive Case Management fee to be received each month per Disease Management enrolled member indicated below:

Total Rate Proposal : \$17.55 – Main contract (August 1, 2006 – February 28, 2010)  
\$16.89 Extension Year 1  
\$17.57 Extension year 2

**2. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

**Exhibit B**  
Budget Detail and Payment Provisions

- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

**3. Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

**4. Amounts Payable**

A. The amounts payable under this agreement shall not exceed:

- 1) Up to \$4,000,000 for the budget period of 2/01/07 through 5/31/08 (16 months).
- 2) Up to \$4,000,000 for the budget period of 6/1/08 through 5/31/09 (12 months).
- 3) Up to \$4,000,000 for the budget period of 6/1/09 through 8/31/10 (15 months).

The maximum amount payable under this Contract shall be up to \$12,000,000. Case Management Fee payments will only be paid for enrolled Members during the operations period.

- B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.
- C. The Contractor must maintain records reflecting actual expenditures for each state fiscal year covered by the term of this agreement.

**5. Timely Submission of Final Invoice**

- A. A final undisputed invoice shall be submitted for payment no more than ninety (90) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding.
- B. The State may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written State approval of an alternate final invoice submission deadline. Written State approval shall be sought from the program contract manager prior to the expiration or termination date of this agreement.
- C. The Contractor is hereby advised of its obligation to submit, with the final invoice, a "Contractor's Release" (Exhibit F) acknowledging submission of the final invoice to the State and certifying the approximate percentage amount, if any, of recycled products used in performance of this agreement.

**6. Progress Payment Withholds**

- A. This provision replaces and supersedes provision 22 of Exhibit D(F)

**Exhibit B**  
Budget Detail and Payment Provisions

- B. Progress payments may not be made more frequently than monthly in arrears for work performed and costs incurred in the performance of the agreement. In the aggregate, progress payments may not exceed 90 percent of the total agreement amount, regardless of agreement length.
- C. Ten percent (10%) may be withheld by CDHS from each invoice submitted for reimbursement, pending receipt of satisfactory completion of all reporting requirements for each operational year.

D. Release of Amounts Withheld

As all reporting requirements for the operational year are completed in their entirety by either the Contractor or Subcontractor any funds withheld for that period may be released to the Contractor upon acceptance and/or acknowledgement that all such items have been completed to the full satisfaction of CDHS.

E. Payment Requests Excluded from the 10 Percent (10%) Withhold

Ten percent (10%) payment withholds shall not be applied to reimbursements or periodic payment requests for direct costs associated with equipment purchases, media buys, operating expense items, and other procurements not directly associated with the Contractor's personal performance.

**7. Expense Allowability / Fiscal Documentation**

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to CDHS upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

**8. Special Payment Provisions**

Refer to attached Exhibit B, Attachment I for *Special Payment Provisions* specific to this contract.

**Exhibit B, Attachment I  
Special Payment Provisions**

In the event of a conflict between the provisions of Exhibit B, Attachment I *Special Payment Provisions*, and Exhibit B *Budget Detail and Payment Provisions*, the provisions of Exhibit B, Attachment I shall govern.

**1. Contractor Risk in Providing Services**

The Contractor will assume total risk for providing the Covered Disease Management Services on the basis of the periodic case management fee for each Member, except as otherwise allowed in this Contract.

The Contractor will retain any monies not expended by the Contractor after having fulfilled these obligations under this Contract.

**2. Case Management Fee Rates**

The California Department of Health Services (CDHS) shall remit to the Contractor a post-paid case management fee each month for each Disease Management Pilot Program Member that appears on the approved list of Members supplied to CDHS by the Contractor. The payment period for disease management services for each Member shall commence on the first day of the month following the month the Member is enrolled. Case management fees shall be reimbursed at the rate bid per member per month, subject to Provision 4, *Determination of Rates* listed below, in accordance with the Rate Proposal submitted in response to RFP 05-45889.

**3. Case Management Fee Rates Constitute Payment in Full**

The case management fee constitutes payment in full for all Covered Disease Management Services required by the Member and for all Administrative Costs incurred by the Contractor in providing for or arranging those services. It does not include payment for recoupment for current or previous losses by the Contractor. CDHS is not responsible for making payment for recoupment of losses.

**4. Determination of Rates**

The case management fee shall be determined by competitive bid and be paid from the beginning of the contract operations period through the end of the operations period. All payments are subject to appropriations of funds by the Legislature and Department of Finance approval. Further, all payments are subject to Federal congressional appropriation of funds.

**5. Obligation Changes**

CDHS and the Contractor may negotiate an earlier termination date, pursuant to Exhibit E, *Additional Provisions*, provision 3.C., *Termination for Cause and Other Terminations, Termination – Contractor*, if a change in contractual obligation is created by a State or Federal change in the Medi-Cal program, or a lawsuit, that substantially alters the financial assumptions and conditions under which the

**Exhibit B, Attachment I  
Special Payment Provisions**

Contractor entered into this Contract, such that the Contractor can demonstrate to the satisfaction of CDHS that it cannot remain financially solvent until the termination date that would otherwise be established under this provision.

**6. Recovery of Case Management Fees**

CDHS shall have the right to recover from the Contractor amounts paid to the Contractor in the following circumstances as specified:

- a. If CDHS determines that a Member has either been improperly enrolled due to ineligibility of the member to enroll in the Contractor's plan, residence outside the Contractor's Service Area, or should have been disenrolled with an effective date in a prior month, CDHS may recover the case management fees made to the Contractor for the Member. Or, upon request by the Contractor, CDHS shall recover the case management fees made to the Contractor for the Member and release the Contractor from all financial and other risk for the provision of services to the Member under the terms of the Contract for the month(s) in question.

Upon request by the Contractor, CDHS may allow the Contractor to retain the case management fees made for Members that are eligible to enroll in the Contractor's plan, but should have been retroactively disenrolled pursuant to Exhibit A, Attachment 1, provision G.2, Entitled Enrollment/Disenrollment, or under other circumstances as approved by the CDHS. If the Contractor retains the case management fees, Contractor shall provide or arrange and pay for all necessary Covered Disease Management Services for the Member, until the Member is disenrolled on a non-retroactive basis.

- b. As a result of the Contractor's failure to perform contractual responsibilities to comply with mandatory Federal Medicaid requirements, the Federal Department of Health and Human Services (DHHS) may disallow Federal Financial Participation (FFP) for payments made by CDHS to Contractor. CDHS may recover the amount disallowed by DHHS by an offset to the case management fee made to the Contractor. If the recovery of the full amount at one time imposes a financial hardship on the Contractor, CDHS at its discretion, may grant the Contractor's request to repay the recoverable amounts in monthly installments over a period of consecutive months not to exceed six months.
- c. If CDHS determines that any other erroneous or improper payment not mentioned above has been made to the Contractor, CDHS may recover the amount determined by an offset to the case management fee made to Contractor. If the recovery of the full amount at one time imposes a financial hardship on the Contractor, CDHS at its discretion, may grant the Contractor's request to repay the recoverable amounts in monthly installments over a period of consecutive months not to exceed six months.

**Exhibit B, Attachment I**  
**Special Payment Provisions**

**7. Invoicing and Payment Additional Requirements**

The Invoicing and Payment requirements stated in Exhibit B, *Budget Detail and Payment Provisions*, Provision 1, entitled *Invoicing and Payment*, paragraph C, are minimum standards and additional billing information may be required as the project develops. Any additional requirements will be considered normal business operation and not require a contract amendment.

**8. Savings Guarantee and Calculation Methodology**

- a. The Disease Management Organization (DMO) shall guarantee California Department of Health Services a zero percent increase in net medical costs for Medi-Cal members who are eligible for the Disease Management Pilot Program (DMPP). Restated, the DMO guarantees that the program will create savings equivalent to the DMPP contracted DMO fees. One hundred percent of the DMO's fees will be at risk for this guarantee of cost-neutrality. If CDHS terminates the contract in the first 16 months, the Contractor will be held to no guarantee. If CDHS terminates the contract after 16 months but before 28 months, the cost-neutrality guarantee will be changed to a guarantee to limit the net increase of medical costs to five percent. If CDHS terminates the contract after 28 months but before 43 months, the cost-neutrality guarantee will be changed to a guarantee to limit the net increase of medical costs to two and one-half percent.
- b. The DMO's guarantee shall be dollar for dollar, in that, as needed, the DMO shall refund its fees in the same dollar amount that the cost-neutrality target is missed. However, the DMO will not be liable for more than 100% of its fee.
- c. DMPP savings are calculated using the following formula: Per member per month (PMPM) costs of the matched control group – PMPM costs of DMPP eligibles x DMPP eligible months.
- d. Costs for Medi-Cal fee-for-service (FFS) beneficiaries without DM services will be estimated using the average (mean) PMPM total Medi-Cal costs of a matched control group. The matched control group will be selected from Medi-Cal FFS beneficiaries from outside the pilot areas who meet the DMPP eligibility criteria. The matched control group's membership will be determined through a statistical matching method by a third-party evaluation contractor. Costs for DMPP eligibles in the pilot area and the matched control group will be determined by actual costs in the operation and phase-out periods after a six to twelve month lag time for run-out claims. Per member costs of DMPP eligibles will include DMPP DMO fees paid (the fee is only paid for DMPP members, but for the guarantee calculation, the fee total will be added to the total medical costs of DMPP eligibles in the pilot areas and averaged).
- e. The determination of costs for both the DMPP eligibles and the matched control group will follow the same algorithm. Cost comparisons shall be made on a PMPM basis, using the formula: *costs divided by member months*. Costs will be

**Exhibit B, Attachment I**  
**Special Payment Provisions**

accumulated as total Medi-Cal expenditures during the operation and phase-out periods of the contract. Costs in the operation and phase-out periods of the contract will be included for months when that Medi-Cal beneficiary met the eligibility criteria for the DMPP.

- f. Member eligibility includes the full set of Medi-Cal FFS beneficiaries and reduces this population based on criteria specified by the CDHS. Based on Medi-Cal eligibility and other criteria, DMPP eligibles may lose or gain eligibility monthly.
- g. Because this methodology uses a matched control group comparison, no baseline comparison is needed, and therefore no adjustment for inflation is required. There will also be no regression-adjustment for any disease because there is no baseline comparison involved. Because the DMPP eligible population is relatively large, no large single expenditures (outliers) will be removed from the calculation. Please note that the savings calculation is based on averaged PMPM expenses for the entire DMPP eligible population in the pilot area, and not just the DMPP members who receive services.

**Exhibit B, Attachment I  
Special Payment Provisions**

**9. Sample Savings Calculation**

	<b>Control Group</b>	<b>DMPP Eligibles</b>	<b>Comments</b>
<i>Contracted Fees and Guarantees</i>			
Claims cost/month for three-year operation period and three-month phase-out period	\$500	\$500	PMPM costs are measured from the first day of the operations period of the contract or the first day of the first month the eligible or member generated a claim.
Vendor fees		\$40	Actual PMPM fee of \$50 total for DMPP member-months and divided by DMPP eligible-months (for purposes of this sample, member months equal 80% of eligible months based on a hypothetical 80% enrollment rate).
Vendor guarantee		0.0% net	Negotiated ("net" refers to total costs with vendor fees included).
Vendor target		\$500	0.0% reduction from \$500 control group claims, including vendor fees
<i>Contracted Fee Performance</i>			
Total actual claims	\$500	\$500	Calculated
Total actual cost	\$500	\$540	Claims plus fees, calculated
<i>Final Vendor Miss (Net Miss)</i>			
Vendor performance versus target		\$540 performance; \$500 target	Net claims should have been \$500 to meet the target.
Amount of miss		\$40	
Payout by vendor to compensate for missing target		\$40	Vendor refunds 100% of their fees.

## Special Terms and Conditions

*(For federally funded service contracts and grant awards)*

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition. The terms "contract", "Contractor" and "Subcontractor" shall also mean, "grant", "Grantee" and "Subgrantee" respectively.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

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## 1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDHS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDHS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDHS, the Contractor may request in writing to CDHS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

## 2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with contract funds.)

Reimbursement for travel and per diem expenses from CDHS under this agreement shall, unless otherwise specified in this agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDHS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the agreement, the new rates shall apply upon their effective date and no amendment to this agreement shall be necessary. Exceptions to DPA rates may be approved by CDHS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDHS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

## 3. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by CDHS or expenses for said items are reimbursed with state or federal funds.)

### a. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDHS or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more that is listed on the CDHS Asset Management Unit's Minor Equipment List and is either furnished by CDHS or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the CDHS program contract manager.
- (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by CDHS or the cost is reimbursed through this agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this agreement.

- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDHS program contract manager, to have all remaining equipment purchased through CDHS' Purchasing Unit. The cost of equipment purchased by or through CDHS shall be deducted from the funds available in this agreement. Contractor shall submit to the CDHS program contract manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDHS. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the CDHS program contract manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
- (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.
  - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
  - (c) Procurements shall be conducted in a manner that provides for all of the following:
    - [1] Avoid purchasing unnecessary or duplicate items.
    - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
    - [3] Take positive steps to utilize small and veteran owned businesses.

- d. Unless waived or otherwise stipulated in writing by CDHS, prior written authorization from the appropriate CDHS program contract manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDHS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDHS (e.g., when CDHS has a need to monitor certain purchases, etc.), CDHS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDHS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor

purchase that CDHS determines to be unnecessary in carrying out performance under this agreement.

- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDHS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

#### 4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by CDHS and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the term equipment and/or miscellaneous property is used in Provision 4, the definitions in Provision 3, Paragraph a shall apply.

Unless otherwise stipulated in this agreement, all equipment and/or miscellaneous property that are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement shall be considered state equipment and the property of CDHS.

- (1) CDHS requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by CDHS or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the CDHS program contract manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDHS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDHS Funds) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or miscellaneous property to the CDHS program contract manager using a form or format designated by CDHS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDHS-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).

- (b) Submit the inventory report to CDHS according to the instructions appearing on the inventory form or issued by the CDHS program contract manager.

- (c) Contact the CDHS program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDHS' Asset Management Unit.

- b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation or

attachment to any property not owned by the State.

- c. Unless otherwise stipulated, CDHS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or miscellaneous property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or miscellaneous property.
  - (1) In administering this provision, CDHS may require the Contractor and/or Subcontractor to repair or replace, to CDHS' satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDHS program contract manager.
- e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall only be used for performance of this agreement or another CDHS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this agreement, the Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the CDHS program contract manager and shall, at that time, query CDHS as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to CDHS. Final disposition of equipment and/or miscellaneous property shall be at CDHS expense and according to CDHS instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by CDHS immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, CDHS may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different CDHS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under this agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the Contractor and/or Subcontractor shall return such vehicles to CDHS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDHS.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

### Automobile Liability Insurance

- (a) The Contractor, by signing this agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDHS program contract manager.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to CDHS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
  - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Services).
  - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
  - [3] The insurance carrier shall notify the California Department of Health Services (CDHS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDHS, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDHS may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

### 5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.

- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
- (2) The State may identify the information needed to fulfill this requirement.
- (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
  - (a) A local governmental entity or the federal government,
  - (b) A State college or university from any State,
  - (c) A Joint Powers Authority,
  - (d) An auxiliary organization of a California State University or a California community college,
  - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
  - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
  - (g) Entities of any type that will provide subvention aid or direct services to the public,
  - (h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: <http://sam.dgs.ca.gov>.
- b. CDHS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.
  - (1) Upon receipt of a written notice from CDHS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDHS.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDHS. CDHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDHS.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for approval, inspection, or audit.
- e. CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- f. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDHS to the Contractor, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.

- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 32.

## 6. Income Restrictions

Unless otherwise stipulated in this agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this agreement shall be paid by the Contractor to CDHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDHS under this agreement.

## 7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDHS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.
  - (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
  - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

## 8. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

## 9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this agreement in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this agreement shall be amended to reflect any reduction in funds.
- d. CDHS has the option to invalidate or cancel the agreement with 30-days advance written notice or to amend the agreement to reflect any reduction in funds.

## 10. Intellectual Property Rights

### a. Ownership

- (1) Except where CDHS has agreed in a signed writing to accept a license, CDHS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) For the purposes of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
  - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing

those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

- (3) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of CDHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of CDHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDHS. **Except as otherwise set forth herein, neither the Contractor nor CDHS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDHS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDHS in establishing or maintaining CDHS' exclusive rights in the Intellectual Property, and in assuring CDHS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDHS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDHS and which result directly or indirectly from this agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDHS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDHS' Intellectual Property rights and interests.

**b. Retained Rights / License Rights**

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to CDHS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDHS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

**c. Copyright**

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDHS to any work product made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, shall include CDHS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2006, etc.], California Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

**d. Patent Rights**

With respect to inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement's scope of work, Contractor hereby grants to CDHS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement's scope of work, then Contractor agrees to assign to CDHS, without additional compensation, all its right, title and interest in and to such inventions and to assist CDHS in securing United States and foreign patents with respect thereto.

**e. Third-Party Intellectual Property**

Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDHS' prior written approval; and (ii) granting to or obtaining for CDHS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon the these terms is unattainable, and CDHS determines that the Intellectual Property should be included in or is required for Contractor's performance of this agreement, Contractor shall obtain a license under terms acceptable to CDHS.

**f. Warranties**

- (1) Contractor represents and warrants that:
  - (a) It is free to enter into and fully perform this agreement.
  - (b) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
  - (c) Neither Contractor's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or

other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
  - (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
  - (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDHS in this agreement.
  - (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
  - (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.
- (2) CDHS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

**g. Intellectual Property Indemnity**

- (1) Contractor shall indemnify, defend and hold harmless CDHS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products. ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDHS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this agreement. CDHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDHS.
- (2) Should any Intellectual Property licensed by the Contractor to CDHS under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to CDHS. CDHS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDHS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-

infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDHS shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3) Contractor agrees that damages alone would be inadequate to compensate CDHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDHS would suffer irreparable harm in the event of such breach and agrees CDHS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

**h. Federal Funding**

In any agreement funded in whole or in part by the federal government, CDHS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement, except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

**i. Survival**

The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

**11. Air or Water Pollution Requirements**

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

**12. Prior Approval of Training Seminars, Workshops or Conferences**

Contractor shall obtain prior CDHS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this contract and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

**13. Confidentiality of Information**

a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.

- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

#### 14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

#### 15. ~~Dispute Resolution Process~~ *See Exhibit E.5*

- a. A Contractor grievance exists whenever there is a dispute arising from CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.
  - (1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
  - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)

c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047. Title 22, California Code of Regulations.

d. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.

e. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

**16. Financial and Compliance Audit Requirements**

a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.

b. Direct service contract means a contract for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, grants, or subventions to other governmental agencies or units of government nor contracts with regional centers or area agencies on aging (H&S Code section 38030).

c. The Contractor, as indicated below, agrees to obtain one of the following audits:

(1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year.

(2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, and/or

(3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

(a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

(b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

(4) If the Contractor submits to CDHS a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended

\$500,000 or more in federal funds for the year covered by the audit report.

- d. Two copies of the audit report shall be delivered to the CDHS program funding this agreement. The audit report must identify the Contractor's legal name and the number assigned to this agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDHS program contract manager shall forward the audit report to CDHS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
- e. The cost of the audits described herein may be included in the funding for this agreement up to the proportionate amount this agreement represents of the Contractor's total revenue. The CDHS program funding this agreement must provide advance written approval of the specific amount allowed for said audit expenses.
- f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
- g. Nothing in this agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
- h. Nothing in this provision limits the authority of the State to make audits of this agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
- i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
- j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
- k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

**17. Human Subjects Use Requirements**

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this agreement, Contractor agrees that if any performance under this agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

**18. Novation Requirements**

If the Contractor proposes any novation agreement, CDHS shall act upon the proposal within 60 days after receipt of the written proposal. CDHS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDHS will initiate an amendment to this agreement to formally implement the approved proposal.

**19. Debarment and Suspension Certification**

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
  - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
  - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
  - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDHS program funding this contract.

- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDHS may terminate this agreement for cause or default.

## 20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

## 21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDHS shall have the right to annul this agreement without liability or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

## 22. Payment Withholds

(Applicable only if a final report is required by this agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this contract, CDHS may, at its discretion, withhold 10 percent (10%) of the face amount of the agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDHS receives a final report that meets the terms, conditions and/or scope of work requirements of this agreement.

**23. Performance Evaluation**

(Not applicable to grant agreements.)

CDHS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDHS. Negative performance evaluations may be considered by CDHS prior to making future contract awards.

**24. Officials Not to Benefit**

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

**25. Four-Digit Date Compliance**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

**26. Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

**27. Use of Small, Minority Owned and Women's Businesses**

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

**28. Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements.)

By signing this agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (§ U.S.C. 1601, et seq.)

## 29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this agreement. Furthermore, Grantee, by signing this agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

## 30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDHS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
  - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
  - (2) Director's and executive committee member's fees.
  - (3) Incentive awards and/or bonus incentive pay.
  - (4) Allowances for off-site pay.
  - (5) Location allowances.
  - (6) Hardship pay.
  - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
  - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
  - (1) Be necessary and reasonable for the performance of the agreement.

- (2) Be determined in accordance with generally accepted accounting principles.
  - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.
- f. **Earned/Accrued Compensation**
- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
  - (2) For multiple year contracts, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the agreement. Holidays cannot be carried over from one contract year to the next. See Provision f (3)(b) for an example.
  - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

**(a) Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a contract period of one year. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of the agreement, the Contractor during a one-year agreement term may only claim up to three weeks of vacation and twelve days of sick leave actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the agreement are not an allowable cost.

**(b) Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

**(c) Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDHS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded contracts in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract or grant or any extension or amendment of that contract or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
  - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
  - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
  - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDHS program contract manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

STATE OF CALIFORNIA  
DEPARTMENT OF HEALTH SERVICES

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____ Name of Contractor	_____ Printed Name of Person Signing for Contractor
_____ Contract / Grant Number	_____ Signature of Person Signing for Contractor
_____ Date	_____ Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Services  
(Name of the CDHS program providing the funds)  
(Program's Street Address, Room Number, and MS Code)  
P.O. Box 997413  
Sacramento, CA 95899-7413

**CERTIFICATION REGARDING LOBBYING**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

Approved by OMB  
05-18-00-16

<p>1. Type of Federal Action:</p> <ul style="list-style-type: none"> <li>a. contract</li> <li>b. grant</li> <li>c. cooperative agreement</li> <li>d. loan</li> <li>e. loan guarantee</li> <li>f. loan insurance</li> </ul>	<p>2. Status of Federal Action:</p> <ul style="list-style-type: none"> <li>a. bid/offer/application</li> <li>b. initial award</li> <li>c. post-award</li> </ul>	<p>3. Report Type:</p> <ul style="list-style-type: none"> <li>a. initial filing</li> <li>b. material change</li> </ul> <p>For Material Change Only:</p> <p>Year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p>Prime _____ Subawardee _____ Tier _____, if known:</p> <p>Congressional District, If known: _____</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, If known: _____</p>
<p>6. Federal Department/Agency: _____</p>	<p>7. Federal Program Name/Description:</p> <p>CDFA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known: _____</p>	<p>9. Award Amount, if known: _____</p>	
<p>10. a. Name and Address of Lobbying Entity (If individual, last name, first name, MI):</p> <p>_____</p>		<p>b. Name and Address of Lobbying Entity (If individual, last name, first name, MI):</p> <p>_____</p>
<p>(attach Continuation Sheet(s) SF-LLL-A, If necessary)</p>		
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ actual _____ planned _____</p>	<p>13. Type of Payment (check all that apply):</p> <ul style="list-style-type: none"> <li>a. retainer</li> <li>b. one-time fee</li> <li>c. commission</li> <li>d. contingent fee</li> <li>e. deferred</li> <li>f. other, specify: _____</li> </ul>	
<p>12. Form of Payment (check all that apply):</p> <ul style="list-style-type: none"> <li>a. cash</li> <li>b. in-kind, specify: Nature _____ Value _____</li> </ul>		
<p>14. Brief Description of Services Performed or to be Performed and Dates(s) of Service, including Officer(s), Employee(s), or Member(s) Contracted for Payment indicated in item 11:</p> <p>_____</p> <p>(Attach Continuation Sheet(s) SF-LLL-A, If necessary)</p>		
<p>15. Continuation Sheet(s) SF-LLL-A Attached: Yes _____ No _____</p>		
<p>16. Information requested through this form is authorized by Title 31, U.S.C., Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to Title 31, U.S.C., Section 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$19,000 and not more than \$100,000 for each such failure.</p>		<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>
<p><b>Federal Use Only</b></p>		<p>Authorized for Local Reproduction Standard Form-LLL</p>

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipients at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and ZIP code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1<sup>st</sup> tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee," then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90401."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
10. (b) Enter the full names of the individual(s) performing services and include full address if different from 10.(a). Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project, (0348-0046), Washington, DC 20503.

**Exhibit E**  
Additional Provisions

**1. Additional Incorporated Exhibits**

A. The following additional exhibits are attached, incorporated herein, and made a part hereof by this reference:

1) Exhibit I                      Technical Proposal (in its entirety)

B. The following documents and any subsequent updates are not attached, but are incorporated herein and made part of hereof by this reference. These documents may be updated periodically by California Department of Health Services (CDHS), as required by program directives. CDHS shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. CDHS will maintain on file, all documents referenced herein and any subsequent updates.

1) CDHS Health Administrative Manual Section 6-1000.

**2. Contract Amendments**

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

**3. Cancellation / Termination**

A. This agreement may be cancelled by CDHS without cause upon a thirty (30) calendar days advance written notice to the Contractor.

B. CDHS reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDHS substantially fails to perform its responsibilities as provided herein.

C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.

D. Agreement termination or cancellation shall be effective as of the date indicated in CDHS' notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.

E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.

F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

**Exhibit E**  
Additional Provisions

**4. Use of Disabled Veteran Business Enterprises (DVBE)**

- A. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- B. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this agreement by this reference.
- C. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDHS, in writing, prior to using a substituted subcontractor.
- D. Requests for substitution must be approved by the program funding this agreement and must include:
  - 1) A written explanation of the reason for the substitution.
  - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
  - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
  - 4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
- E. If requested by CDHS, Contractor agrees to provide verification, in a form agreed to by CDHS, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of contract award or in an applicable amendment.

**5. Dispute Resolution Process**

- A. This provision replaces and supersedes provision 15 of Exhibit D (F).
- B. If a dispute arises between the Contractor and CDHS, the Contractor must seek resolution using the process outlined below.
  - 1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor must direct the grievance together with any evidence, in writing, to the program Branch Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief must render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.

**Exhibit E**  
Additional Provisions

- 2) When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.
- 3) Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- 4) There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

**6. Insurance Requirements**

**A. Commercial Liability Insurance**

The Contractor must furnish to CDHS a certificate of insurance stating that the commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under the insured agreement. The commercial general liability insurance shall apply separately to each insured against whom the claim is made or suit is brought subject to the Contractor's limit of liability.

**B.** The certificate of insurance must be issued by an insurance company acceptable to the Department of General Services (DGS) Office of Risk and Insurance Management or be provided through partial or total self-insurance acceptable to DGS.

**C.** The certificate of insurance must include the following provisions:

- 1) The insurer will not cancel the insured's coverage without giving thirty (30) days prior written notice to CDHS, and
- 2) The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this agreement.

**Exhibit E**  
Additional Provisions

- D. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Contractor agrees to provide, at least thirty (30) calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than the remainder of the term of this agreement or for a period of not less than one year. New certificates of insurance are subject to the approval of DGS, and the Contractor agrees that no work or services shall be performed prior to such approval. CDHS may, in addition to other remedies it may have, terminate this agreement on the occurrence of such event.
- E. CDHS will not be responsible for any premiums, deductibles, or assessments on any insurance policy.

**7. Avoidance of Conflicts of Interest by Contractor**

- A. CDHS intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDHS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDHS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
  - 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.
  - 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDHS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDHS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDHS and cannot be resolved to the satisfaction of CDHS, the conflict will be grounds for terminating the contract. CDHS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

**Exhibit E**  
Additional Provisions

**8. Domestic Partners**

This provision supersedes and replaces Provision 8 (Domestic Partners) in the Department of General Services' Contractor Certification Clauses incorporated by reference within the General Terms and Conditions (GTC) cited on the face of the agreement. Based upon an existing program exemption from Chapter 2 of Part 2 of Division 2 of the Public Contract Code that applies to this agreement, CDHS concludes that this agreement is not subject to the requirements of Public Contract Code Section 10295.3 governing domestic partners.

**9. Governing Law**

In addition to Exhibit C, General Terms and Conditions, Provision 14, Governing Law, Contractor also agrees to the following:

- A. If it is necessary to interpret this Contract, all applicable laws may be used as aids in interpreting the Contract. However, the parties agree that any such applicable laws shall not be interpreted to create contractual obligations upon CDHS or Contractor, unless such applicable laws are expressly incorporated in to this Contract in some section other than this provision. Except for Exhibit E, Additional Provisions, provision 22, Sanctions, and provision 23, Liquidated Damages, the parties agree that any remedies for CDHS' or Contractor's non-compliance with laws not expressly incorporated into this Contract, or any covenants implied to be part of this Contract, shall not include money damages, but may include equitable remedies such as injunctive relief or specific performance. This Contract is the product of mutual negotiation, and if any ambiguities should arise in the interpretation of this Contract, both parties shall be deemed authors of this Contract.
- B. Any provision of this Contract which is in conflict with current or future applicable Federal or State laws, or regulations, is hereby amended to conform to the provision to those laws and regulations. Such amendment of the Contract shall be effective on the effective date of the statutes or regulations necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

Such amendment shall constitute grounds for termination of this Contract in accordance with the procedures and provisions of Exhibit E, Additional Provisions, provision 3.C., under Cancellation/Termination. The parties shall be bound by the terms of the amendment until the effective date of the termination.

**10. Entire Agreement**

This written Contract and any amendments shall constitute the entire agreement between the parties. No oral representations shall be binding on either party unless such representations are reduced to writing and made an amendment to the Contract.

**Exhibit E**  
Additional Provisions

**11. Change Requirements**

A. General Provisions

The parties recognize that during the life of this Contract, the Disease Management Pilot Program (DMPP) will be a dynamic program requiring numerous changes to its operations and that the scope and complexity of changes will vary widely over the life of the Contract. The parties agree that the development of a system, which has the capability to implement such changes in an orderly and timely manner, is of considerable importance.

B. Contractor's Obligation to Implement

The Contractor will make changes mandated by CDHS. In the case of mandated changes in regulations, statutes, federal guidelines, or judicial interpretation, CDHS may direct the Contractor to immediately begin implementation of any change by issuing a change order. If CDHS issues a change order, the Contractor will be obligated to implement the required changes while discussions relevant to any rate adjustment, if applicable, are taking place.

CDHS may, at any time, within the general scope of the Contract, by written notice, issue change orders to the Contract.

C. Moral or Religious Objections to Providing a Service

If the Contractor has a moral or religious objection to providing a service or referral for a service for which the Contractor is not responsible, during the term of this agreement, the Contractor shall notify the CDHS in writing providing sufficient detail to establish the moral or religious grounds for the objection.

**12. Delegation of Authority**

CDHS intends to implement this contract through a single administrator, called the "Contract Manager." CDHS will appoint the Contract Manager. The Contract Manager, on behalf of CDHS, will make all determinations and take all actions appropriate under this Contract, subject to the limitations of applicable Federal and State laws and regulations. The Contract Manager may delegate their authority to act to an authorized representative through written notice to Contractor.

Contractor will designate a single administrator; hereafter called the "Contractor's Representative." The Contractor's Representative, on behalf of the Contractor, will make all determinations and take all actions as appropriate to implement this Contract, subject to the limitations of the Contract, Federal and State laws and regulations. The Contractor's Representative may delegate their authority to act to an authorized representative through written notice to the Contract Manager. The Contractor's Representative will be empowered to legally bind the Contractor to all agreements reached with CDHS.

Contractor shall designate Contractor's Representative in writing and shall notify the Contract Manager in accordance with Exhibit E, Additional Provisions, provision 17, Notices.

**Exhibit E**  
Additional Provisions

**13. Authority of the State**

Sole authority to establish define, or determine the reasonableness, the necessity and level and scope of covered benefits under the DMPP administered in this Contract or coverage for such benefits, or the eligibility of such beneficiaries or providers to participate in the DMPP reside with CDHS.

Sole authority to establish or interpret policy and its application related to the above areas will reside with CDHS.

The Contractor may not make any limitations, exclusions, or changes in benefits or benefit coverage; any changes in definition or interpretation of benefits; or any changes in the administration of the Contract related to the scope of benefits, allowable coverage for those benefits, or eligibility of beneficiaries or providers to participate in the program, without the express, written direction or approval from CDHS.

**14. Fulfillment of Obligations**

No covenant, condition, duty, obligation or undertaking continued or made part of this Contract will be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation or undertaking to be kept, performed or discharged by the party to which the same may apply; and, until performance or satisfaction of all covenants, conditions, duties, obligations and undertakings is complete, the other party will have the right to invoke any remedy under this Contract, or under law, notwithstanding such forbearance or indulgence.

**15. Obtaining CDHS Approval**

Contractor shall obtain written approval from CDHS, as provided in Exhibit E, Additional Provisions, provision 36, CDHS Approval Process, prior to commencement of operation under this Contract.

CDHS reserves the right to review and approve any changes to Contractor's protocols, policies, and procedures required for this Contract.

**16. Certifications**

With respect to any report, invoice, record, papers, documents, books of account, or other Contract required data submitted, pursuant to the requirements of this Contract, the Contractor's Representative or his/her designee will certify, under penalty of perjury, that the report, invoice, record, papers, documents, books of account or other Contract required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by CDHS in writing.

**Exhibit E**  
**Additional Provisions**

**17. Notices**

All notices to be given under this Contract will be in writing and will be deemed given when mailed to CDHS or the Contractor:

State Department of Health Services  
Medi-Cal Benefits Branch  
1501 Capitol Avenue  
P.O. Box 997417, MS 4601  
Sacramento, CA 95899-7417

McKesson Health Solutions, LLC  
335 Interlocken Parkway,  
Broomfield, CO 80021  
Attn: Kevin Ryan

**18. Term**

The Contract will become effective February 1, 2007, and will continue in full force and effect through August 31, 2010, for a total of 43 months.

The term of the Contract consists of the following three periods:

- 1) The Implementation Period shall extend from February 1, 2007 to May 31, 2007 (4 months);
- 2) The Operations Period shall extend from June 1, 2007 to May 31, 2010 (36 months);
- 3) The Phaseout Period shall extend from July 1, 2010 to August 31, 2010 (3 months).

The Operations Period will commence subject to CDHS acceptance of the Contractor's readiness to begin the Operations Period.

**19. Contract Extension**

CDHS will have the exclusive option to extend the term of the Contract for any Service Area during the last twelve (12) months of the Contract, as determined by the original expiration date or by a new expiration date if an extension option has been exercised. CDHS may invoke up to two (2) separate extensions of up to twelve (12) months each. The Contractor will be given at least nine (9) months prior written notice of CDHS' decision on whether it will exercise this option to extend the contract for each service area.

Contractor will provide written notification to CDHS of its intent to accept or reject the extension within five (5) working days of the receipt of the notice from CDHS.

**20. Service Area**

The Service Area covered under this Contract includes specific areas of Los Angeles County and Alameda County (see Exhibit E, Additional Provisions, Attachment I, entitled, "Location and Number of Beneficiaries").

**21. Phaseout Requirements**

- A. CDHS shall retain the lesser of an amount equal to ten percent (10%) of the last month's Service Area case management fee or one million dollar (\$1,000,000) for each Service Area unless provided otherwise, until all activities required during the Phaseout Period for each Service Area are fully completed to the satisfaction of CDHS, in its sole discretion.

**Exhibit E**  
Additional Provisions

If all Phaseout activities for each Service Area are completed by the end of the Phaseout Period, the withhold will be paid to the Contractor. If the Contractor fails to meet any requirements by the end of the Phaseout Period for each Service Area, CDHS will deduct the costs of the remaining activities from the withhold amount and continue to withhold payments until all activities are completed.

- B. The Phaseout Period will ensure, at the termination of this Contract, the orderly transfer of necessary data and history records is made from the Contractor to CDHS or to a successor Contractor. The Contractor shall not provide services to Members during the Phaseout Period.

Ninety (90) calendar days prior to termination or expiration of the Operations Period and through the three (3) month Phaseout Period for each Service Area, the Contractor shall assist CDHS in the transition of Members; and in ensuring, to the extent possible, continuity of Member-Provider relationships. In doing this, the Contractor will make available to CDHS copies of Medical Records, Members records, and any other pertinent information, including information maintained by any subcontractor, necessary for efficient case management of Members, as determined by CDHS in cooperation with the Medical Director. In no circumstances will a Medical beneficiary be billed for this activity.

- C. Phaseout for the Contractor will consist of the completion of all financial and reporting obligations of the Contractor. The Contractor will submit to CDHS all reports required in Exhibit A, Attachment I, entitled Scope of Work-Contract Performance, Provision A, Contract Administration, paragraph 3., Reporting Requirements, for the period from the last submitted report through the expiration or termination date.

All data and information provided by the Contractor will be accompanied by letter, signed by the responsible authority, certifying, under penalty of perjury, to the accuracy and completeness of the materials supplied.

- D. Phaseout Period will commence on the date the Operations Period of the Contract expires. Phaseout related activities are non-payable items.
- E. The Contractor shall notify Members of their DM benefit and options available upon termination or expiration of this Contract.

**22. Sanctions**

In the event CDHS finds Contractor non-compliant with any provisions of this Contract, applicable statutes or regulations, CDHS may impose sanctions as provided in Title 22, CCR, Section 51452.

**23. Liquidated Damages Provisions**

- A. General

It is agreed by the State and Contractor that:

- 1) If Contractor does not provide or perform the requirements of this Contract or applicable laws or regulations, damage to the State shall result.

**Exhibit E**  
Additional Provisions

- a) Proving such damages shall be costly, difficult and time-consuming;
  - b) Should the State choose to impose liquidated damages, Contractor shall pay the State those damages for not providing or unsatisfactorily performing the specified provisions;
  - c) Additional damages may occur in the Service Areas by prolonged periods in which Contractor does not provide or perform requirements;
  - d) The damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Contract: and
  - e) CDHS may, at its discretion, offset liquidated damages from case-management fee payments owed to Contractor.
- 2) Imposition of liquidated damages as specified in this provision 23, Liquidated Damages Provisions, paragraph B, entitled Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period, and paragraph C, entitled Liquidated Damages for Violation of Contract Terms or Regulations Regarding the Operations Period, shall follow the administrative processes described below.
  - 3) CDHS shall provide Contractor with written notice of deficiencies specifying the Contractor requirement(s) contained in the Contract or as required by Federal and State law or regulation, not provided or unsatisfactorily performed.
  - 4) During the Implementation Period, Contractor shall submit or complete the outstanding requirement(s) specified in the written notice within five (5) working days from the date for the notice, unless, subject to the Contract Manager's written approval, Contractor submits a written request for extension. The request must include the following: the provisions requiring an extension; the reason for the delay; and the proposed date of the revised submission.
  - 5) During the Implementation Period, if Contractor has not performed or completed an Implementation Period requirement or secured an extension for the submission of the outstanding requirement, CDHS may impose liquidated damages for the amount specified under this provision 23, Liquidated Damages Provisions, paragraph B, entitled Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period.
  - 6) During the Operations Period, Contractor shall demonstrate satisfactory performance of Contractor's requirement(s) specified in the written notice within a thirty (30) calendar day Corrective Action period from the date of the notice. CDHS has the sole discretion to grant an extension subject to prior written request from the Contractor. Such request must be received by CDHS at least 5 days prior to expiration of the Corrective Action period. If the Contractor has not demonstrated the provision or performance of the Contractor's requirement(s) specified in the written notice during the Corrective Action period, CDHS may impose liquidated damages for each day the specified Contractor's requirement is not satisfactorily performed or provided for the amount specified in this provision 23, Liquidated Damages Provisions, paragraph C, entitled Liquidated Damages for Violation of Contract

**Exhibit E**  
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- 7) During the Operations Period, if Contractor has not performed or provided Contractor's requirement(s) specified in the written notice or secured the written approval for an extension, after thirty (30) calendar days from the first day of the imposition of liquidated damages, CDHS shall notify Contractor in writing of the increase of the liquidated damages to the amount specified in this provision 23, Liquidated Damages Provisions, paragraph C, entitled Liquidated Damages for Violation of Contract Terms or Regulations Regarding the Operations Period.

Nothing in this provision shall be construed as relieving Contractor from performing any other Contract duty not listed herein, nor is the State's right to enforce or to seek other remedies for failure to perform any other Contract duty hereby diminished.

**B. Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period**

CDHS may impose liquidated damages of \$2,500 per requirement specified in the written notice for each day of the delay in completion or submission of implementation plan requirements beyond the Implementation Period as specified in Exhibit A, Attachment I, entitled Scope of Work – Contract Performance, Provision J, entitled Implementation Plan and Deliverables.

If CDHS determines that a delay or other unsatisfactory performance was caused in part by the State, CDHS will reduce the liquidated damages proportionately.

**C. Liquidated Damages for Violation of Contract Terms or Regulations During the Operations Period**

CDHS may impose liquidated damages of \$500 per violation of Contract requirement not performed in accordance with Exhibit A, Attachment I, entitled Scope of Work – Contract Performance, Provision G, entitled Member Services – Scope of Services.

If CDHS determines that a delay or other unsatisfactory performance was caused in part by the State, CDHS will reduce the liquidated damages proportionately.

**D. Liquidated Damages for Violation of Contract Terms Regarding the Phaseout Period**

CDHS may impose liquidated damages of \$500 per requirement specified in the written notice for each day of the delay in completion of Phaseout requirements beyond the Phaseout Period as specified in this Exhibit E, Additional Provisions, provision 21, entitled Phaseout Requirements.

If CDHS determines that a delay or other unsatisfactory performance was caused in part by the State, CDHS will reduce the liquidated damages proportionately.

**E. Conditions for Termination of Liquidated Damages**

Except as waived by the Contract Manager, no liquidated damages imposed on Contractor will be terminated or suspended until the Contractor issues a written notice of correction to the Contract Manager certifying, under penalty of perjury, the correction of condition(s) for which liquidated damages were imposed. Liquidated damages will cease on the day of the Contractor's certification only if the subsequent verification of the correction by CDHS

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Additional Provisions

establishes that the correction has been made in the manner and at the time certified to by the Contractor.

The Contract Manager will determine whether the necessary level of documentation has been submitted to verify corrections. The Contract Manager will be the sole judge of the sufficiency and accuracy of any documentation. Corrections must be sustained for a reasonable period of at least ninety (90) calendar days from CDHS acceptance; otherwise, liquidated damages may be re-imposed without a succeeding grace period within which to correct. Contractor's use of resources to correct deficiencies will not be allowed to cause other Contract compliance problems.

F. Severability of Individual Liquidated Damages Clauses

If any portion of these liquidated damages provisions is determined to be unenforceable, the other provisions will remain in full force and effect.

**24. Disputes**

In addition to Exhibit C, entitled General Terms and Conditions, provision 6, Disputes, Contractor also agrees to the following:

This section will be used by the Contractor as the means of seeking resolution of disputes on contractual issues.

Filing a dispute will not preclude CDHS from recouping the value of the amount in dispute from the Contractor or from offsetting this amount from subsequent case management fee(s). If the amount to be recouped exceeds twenty-five percent (25%) of the case management fee, amounts of up to twenty-five percent (25%) will be withheld from successive case management fees until the amount in dispute is fully recouped.

A. Disputes Resolution by Negotiation

CDHS and Contractor agree to negotiate in good faith to try to resolve all contractual issues to the mutual agreement of the parties at the Contract Manager level without litigation. The parties recognize that the implementation of this policy depends on open-mindedness, and the need for both sides to present adequate supporting information on all matters in question or dispute.

B. Notification of Dispute

Within fifteen (15) calendar days of the date the dispute concerning performance of this Contract arises or otherwise becomes known to the Contractor, the Contractor will notify the Contract Manager in writing of the dispute, describing the conduct (including actions, inactions, and written and oral communications) which it is disputing.

The Contractor's notification will state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) That it is a dispute pursuant to this section.

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- 2) The date, nature, and circumstances of the conduct, which is subject of the dispute.
- 3) The names, phone numbers, function, and activity of the Contractor, subcontractor(s), CDHS/State official(s) or employee(s) involved in or knowledgeable about the conduct.
- 4) The identification of any documents and the substances of any oral communications involved in the conduct. Copies of all identified documents will be attached.
- 5) The reason the Contractor is disputing the conduct.
- 6) The cost impact to the Contractor directly attributable to the alleged conduct, if any.
- 7) The Contractor's desired remedy.

The required documentation, including cost impact data, will be carefully prepared and submitted with substantiating documentation by the Contractor. This documentation will serve as the basis for any subsequent appeal.

Following submission of the required notification with supporting documentation, the Contractor will diligently continue performance of this Contract, including matters identified in the Notification of Dispute, to the maximum extent possible.

C. Contract Manager's or Designee

Pursuant to a request by Contractor, the Contract Manager may provide for a dispute to be decided by a designee designated by CDHS; who is not the Contract Manager and is not directly involved in the DMPP. Any disputes concerning performance of this Contract shall be decided by the Contract Manager or the designee in a written decision stating the factual basis for the decision. Within thirty 30 calendar days of receipt of a Notification of Dispute, the Contract Manager or designee shall either:

- 1) Find in favor of Contractor, in which case the Contract Manager or designee:
  - a) Countermand the earlier conduct which caused Contractor to file a dispute; or
  - b) Reaffirm the conduct and, if there is a cost impact sufficient to constitute a change in obligations pursuant to Exhibit B, Payment Provisions, direct CDHS to comply with that Exhibit; or
- 2) Deny Contractor's dispute and, where necessary, direct the manner of future performance; or
- 3) Request additional substantiating documentation in the event the information in Contractor's notification is inadequate to permit a decision to be made under 1) or 2) above, and shall advise Contractor as to what additional information is required, and establish how that information shall be furnished. Contractor shall have thirty (30) calendar days to respond to the Contract Manager or designee's request for further information. Upon receipt of this additional requested information, the Contract Manager or designee shall have thirty (30)

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calendar days to respond with a decision. Failure to supply additional information required by the Contract Manager or designee within the time period specified above shall constitute waiver by Contractor of all claims in accordance with paragraph F, entitled Waiver of Claims, in this provision 24, Disputes.

A copy of the decision shall be served on the Contractor.

**D. Appeal of Contract Manager's or Designee's Decision**

Contractor shall have thirty (30) calendar days following the receipt of the decision to file an appeal of the decision to the Director. All appeals shall be governed by Health and Safety Code Section 100171, except for those provisions of Section 100171(d)(1) relating to accusations, statements of issues, statement to respondent, and notice of defense. All appeals shall be in writing and shall be filed with CDHS' Office of Administrative Hearings and Appeals. An appeal shall be deemed filed on the date it is received by the Office of Administrative Hearings and Appeals. An appeal shall specifically set forth each issue in dispute, and include Contractor's contentions as to those issues. However, Contractor's appeal shall be limited to those issues raised in its Notification of Dispute filed pursuant to paragraph B, Notification of Dispute, in this provision 24. Failure to appeal the decision in a timely manner shall constitute a waiver by the Contractor of all claims arising out of that conduct, in accordance with paragraph F, Waiver of Claims, of this provision 24. Contractor shall exhaust all procedures provided for in this provision, prior to initiating any other action to enforce this Contract.

**E. Contractor Duty to Perform**

Pending final determination of any dispute hereunder, Contractor shall proceed diligently with the performance of this Contract and in accordance with the Contract Manager's or designee's decision.

If, pursuant to an appeal under paragraph D, Appeal of Contract Manager or Designee's Decision, of this provision 24, the Contract Manager's or designee's decision is reversed, the effect of the decision pursuant to paragraph D, Appeal of Contract Manager or Designee's Decision, shall be retroactive to the date of the Contract Manager's or designee's decision, and Contractor shall promptly receive any benefits of such decision. CDHS shall not pay interest on any amounts paid pursuant to a Contract Manager's or designee's decision or any appeal of such decision.

**F. Waiver of Claims**

If Contractor fails to submit a Notification of Dispute, supporting and substantiating documentation, any additionally required information, or an appeal of the Contract Manager's or designee's decision, in the manner and within the time specified in this provision, that failure shall constitute a waiver by Contractor of all claims arising out of that conduct, whether direct or consequential in nature.

**25. Audit**

In addition to Exhibit C, General Terms and Conditions, Provision 4, Audit, Contractor also agrees to the following:

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The Contractor will maintain such books and records necessary to disclose how the Contractor discharged its obligations under this Contract. These books and records will disclose the quantity of disease management (DM) covered services provided under this Contract, the quality of those services, the manner and amount of payment for those services, the person eligible to receive DM covered services, the manner in which the Contractor administered its daily business, and the cost thereof.

**A. Books and Records**

These books and records will include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract including working papers; reports submitted to CDHS; financial records; all Medical records, medical charts and prescription information; and other documentation pertaining to DM covered services rendered to Members.

**B. Records Retention**

Notwithstanding any other records retention time period set forth in this Contract, these books and records will be maintained for a minimum of five (5) years from the end of the current Fiscal Year in which the date of service occurred; in which the record or data was created or applied; and for which the financial record was created or the Contract is terminated, or, in the event the Contractor has been duly notified that CDHS, Department of Health and Human Services (DHHS), California Department of Justice Bureau of Medi-Cal Fraud (DOJ), or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the Contract, until such time as the matter under audit or investigation has been resolved; whichever is later.

**26. Inspection Rights**

In addition to Exhibit D (F), Special Terms and Conditions, Provision 8, Site Inspection, Contractor also agrees to the following:

Through the end of the records retention period specified in Exhibit E, Additional Provisions, provision 25, Audit, paragraph B, Records Retention, Contractor shall allow the CDHS, DHHS, DOJ, the Comptroller General of the United States, Department of Managed Health Care, and other authorized State agencies, or their duly authorized representatives, including CDHS' contracted evaluation consultant, to inspect, monitor or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract, and to inspect, evaluate, and audit any and all books, records, and facilities maintained by Contractor and subcontractors pertaining to these services at any time during normal business hours.

Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract, including working papers, reports, financial records, and books of account, Medical Records, prescription files, laboratory results, Subcontracts, information systems and services rendered to Members. Through the end of the records retention period specified in Exhibit E, Additional Provisions, provision 25, entitled Audit, Contractor shall furnish any record, or copy of it, to CDHS or any other entity listed in this section, at Contractor's sole expense, on request.

**Exhibit E**  
Additional Provisions

Authorized State and Federal agencies will have the right to monitor all aspects of the Contractor's operation for compliance with the provisions of this Contract and applicable Federal and State laws and regulations. Such monitoring activities will include, but are not limited to, inspection and auditing of Contractor, subcontractor(s), and provider facilities, management systems and procedures, and books and records as the Director deems appropriate, at any time during the Contractor's or other facilities normal business hours. The monitoring activities will be either announced or unannounced.

To assure compliance with the Contract and for any other reasonable purpose, the State and its authorized representatives and designees will have the right to access the premise(s), with or without notice to the Contractor. This will include the MIS operations site or such other place where duties under the Contract are being performed.

Staff designated by authorized State agencies will have access to all security areas and the Contractor will provide, and will require any and all of its subcontractors to provide, reasonable facilities, cooperation and assistance to State representative(s) in the performance of their duties. Access will be undertaken in such a manner as to not unduly delay the work of the Contractor and/or the subcontractor(s).

**27. Confidentiality of Information**

In addition to Exhibit D (F), Special Terms and Conditions, Provision 13, Confidentiality of Information, Contractor also agrees to the following duties and responsibilities with respect to confidentiality of information and data:

- A. Notwithstanding any other provision of this Contract, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, CFR, Section 431.300 et seq., Section 14100.2, Welfare and Institution Code, and regulations adopted there under. For the purpose of this Contract, all information, records, data, and data elements collected and maintained for the operation of the contract and pertaining to Members shall be protected by the Contractor from unauthorized disclosure.

Contractor may release Medical Records in accordance with applicable law pertaining to the release of this type of information.

- B. With respect to any identifiable information concerning a Member under this Contract that is obtained by the Contractor or its subcontractors, the Contractor: 1) will not use any such information for any purpose other than carrying out the express terms of this contract, 2) will promptly transmit to CDHS all requests for disclosure of such information, 3) will not disclose except as otherwise specifically permitted by this Contract, any such information to any party other than CDHS without CDHS' prior written authorization specifying that the information is releasable under Title 42, CFR, Section 431.300 et seq., Section 14100.2 Welfare and Institutions Code, and regulations adopted there under, and 4) will, at the termination of this Contract, return all such information to CDHS or maintain such information according to written procedures sent to the Contractor by CDHS for this purpose.

**28. Records Related to Recovery for Litigation**

Upon request by CDHS, Contractor shall gather in a timely manner, preserve and provide to CDHS,

**Exhibit E**  
Additional Provisions

in the form and manner specified by CDHS, any information specified by CDHS, subject to any lawful privileges, in Contractor's or its subcontractor's possession, relating to threatened or pending litigation by or against CDHS. If Contractor asserts that any requested documents are covered by a privilege, Contractor shall: 1) identify such privileged documents while retaining the privilege; and 2) state the privilege being claimed that supports withholding production of the document. Such request shall include, but is not limited to, a response to a request for documents submitted by any party in any litigation by or against CDHS. Contractor acknowledges that time may be of the essence in responding to such request. Contractor shall use all reasonable efforts to immediately notify CDHS of any subpoenas, document production request, or requests for records, received by Contractor or its subcontractors related to this Contract or subcontracts entered into under this Contract.

**29. Fraud and Abuse Reporting**

Contractor shall report to the Contract Manager all cases of suspected fraud and/or abuse, as defined in 42 CFR, Section 455.2, where there is reason to believe that an incident of fraud and/or abuse has occurred, by subcontractors, Members, providers, or employees within ten (10) working days of the date when Contractor first becomes aware of or is on notice of such activity. Contractor shall establish policies and procedures for identifying, investigating and taking appropriate corrective action against fraud and/or abuse in the provision of DM covered services under the Medi-Cal program. Contractor shall notify CDHS prior to conducting any investigations, based upon Contractor's finding that there is reason to believe that an incident of fraud and/or abuse has occurred, and, upon the request of CDHS, consult with CDHS prior to conducting such investigations. Without waiving any privileges of Contractor, Contractor shall report investigation results within ten (10) working days of conclusion of any fraud and/or abuse investigation.

**30. Equal Opportunity Employer**

Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state it is an equal opportunity employer, and will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by CDHS, advising the labor union or workers' representative of the Contractor's commitment as an equal opportunity employer and will post copies of the notice in conspicuous places available to employees and applicants for employment.

**Exhibit E**  
Additional Provisions

**31. Discrimination Prohibitions**

**A. Member Discrimination Prohibition**

Contractor shall not discriminate against members or eligible members because of race, color, creed, religion, ancestry, marital status, sexual orientation, national origin, age, sex, or physical or mental handicap in accordance with Title VI or the Civil Rights Act of 1964, 42 USC Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by law or regulations. For the purpose of this Contract, discriminations on the grounds of race, color, creed, religion, ancestry, age, sex, national origin, marital status, sexual orientation, or physical or mental handicap include, but are not limited to, the following:

- 1) Denying any member any DM covered services;
- 2) Providing to a Member any DM covered services which are different, or are provided in a different manner or at a different time from those provided to other members under this Contract except where medically indicated;
- 3) Subjecting a member to segregation or separate treatment in any manner related to the receipt of any DM covered services.
- 4) Restricting a member in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any DM covered services; treating a member or eligible member differently from others in determining whether he or she satisfies admission; enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any DM covered services.

Contractor shall take affirmative action to ensure that members are provided DM covered services without regard to race, color, national origin, creed, ancestry, religion, language, age, gender, marital status, sexual orientation, health status, or disability, except where medically indicated.

**B. Discrimination Related to Health Status**

Contractor shall not discriminate among eligible members on the basis of their health status requirements or requirements for health care services during enrollment, re-enrollment, or disenrollment. Contractor will not terminate the enrollment of an eligible beneficiary based on an adverse change in the member's health unless the change in health status affects the Member's eligibility for the program.

**C. Discrimination Complaints**

Contractor agrees that copies of all complaints alleging discrimination against members or eligible members because of race, color, national origin, creed, ancestry, religion, language, age, gender, marital status, sexual orientation, health status, or disability, will be forwarded to CDHS for review and appropriate action.

**Exhibit E**  
Additional Provisions

**32. Americans with Disabilities Act of 1990 Requirements**

Contractor shall comply with all applicable federal requirements in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (42 USC, Section 12101 et seq.), Title 45, Code of Federal Regulations (CFR), Part 84. Title IX of the Education Amendments of 1972 (regarding education programs and activities), and the Age Discrimination Act of 1975.

**33. Word Usage**

Unless the context of this Contract clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," "must," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

**34. Program Information**

CDHS shall provide Contractor with complete and current information with respect to pertinent policies, procedures, and guidelines affecting the operation of this Contract, within thirty (30) calendar days of receipt of Contractor's written request for information, to the extent that the information is readily available. If the requested information is not available, CDHS shall notify Contractor within thirty (30) calendar days, in writing, of the reason for the delay and when Contractor may expect the information.

**35. Financial Statements**

The **Successful** Proposer must submit one of the following after the contract award is made to their firm. This submission must be received prior to the contract effective date.

- A. An audit report (only the three paragraph statement including the third paragraph auditor's opinion) from an independent auditor. The report must not list any "going concern" issue regarding the Proposer's ability to operate for the upcoming year from the end of the audit's fieldwork. The audit report must be from an audit completed within the last 12 months from the date of this RFP release. However, neither financial documents nor audit documents shall be submitted.
- B. A letter of credit from an FDIC insured financial institution for at least \$2,000,000 that is current on the date that the letter of credit is submitted to CDHS. This letter will serve as an indication that the Proposer has access to adequate operating capital to undertake the DMPP. No other financial documentation other than the letter of credit shall be submitted.

**36. CDHS Approval Process**

Within sixty (60) calendar days of receipt, CDHS shall make all reasonable efforts to approve in writing the use of such material provided to CDHS, provide Contractor with a written explanation why its use is not approved, or provide a written estimated date of completion of CDHS' review process. If CDHS does not complete its review of submitted material within sixty (60) calendar days of receipt, or within the estimated date of completion of CDHS review, Contractor may elect to

**Exhibit E**  
Additional Provisions

implement or use the material at Contractor's sole risk and subject to possible subsequent disapproval by CDHS. This paragraph shall not be construed to imply CDHS approval of any material that has not received written CDHS approval. This paragraph shall not apply to Subcontracts or sub-subcontracts.

**Exhibit E, Attachment 1**

Mckesson Health Solutions, LLC  
06-55520

**Location of Beneficiaries**

**Los Angeles County**

<b>Zip Code</b>
90026
90027
90028
90029
90031
90032
90033
90034
90046
90201
90255
90280
91201
91205
91206
91331
91402
91605
91606

**Alameda County**

<b>All Zip Codes</b>
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## Contractor's Release

### Instructions to Contractor:

**With final invoice(s) submit one (1) original and one (1) copy.** The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

### Submission of Final Invoice

Pursuant to **contract number** 06-55520 entered into between the State of California Department of Health Services (CDHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** \_\_\_\_\_, in the **amount(s) of \$** \_\_\_\_\_ and **dated** \_\_\_\_\_.  
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

### Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

### Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

### Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

### Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDHS or purchased with or reimbursed by contract funds)

Unless CDHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDHS, at CDHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

### Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

**ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE**

Contractor's Legal Name (as on contract): McKesson Health Solutions, LLP

Signature of Contractor or Official Designee: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name/Title of Person Signing: \_\_\_\_\_

**CDHS Distribution:** Accounting (Original) Program

**Exhibit G**  
HIPAA Business Associate Addendum

**I. Recitals – HIGH RISK**

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations:").
- B. The Department of Health Services ("DHS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI").
- C. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium that relates to the past, present, or future physical or mental condition of an individual, the provision of health and dental care to an individual, or the past, present, or future payment for the provision of health and dental care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall have the meaning given to such term under HIPAA and HIPAA regulations, as the same may be amended from time to time.
- D. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- E. As set forth in this Agreement Contractor, here and after, is the Business Associate of DHS that provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHS and creates, receives, maintains, transmits, uses or discloses PHI.
- F. DHS and Business Associate desire to protect the privacy and provide for the security of PHI created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, in compliance with HIPAA and HIPAA regulations and other applicable laws.
- G. The purpose of the Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA regulations.
- H. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms in the HIPAA regulations.

In exchanging information pursuant to this Agreement, the parties agree as follows:

**1. Permitted Uses and Disclosures of PHI by Business Associate**

- A. **Permitted Uses and Disclosures.** Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHS.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:
  - 1) **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will

**Exhibit G**  
**HIPAA Business Associate Addendum**

remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to DHS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHS.

## 2. Responsibilities of Business Associate

Business Associate agrees:

- A. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
- B. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHS; and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section C, Security, below. Business Associate will provide DHS with its current and updated policies.
- C. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI, and provide data security procedures for the use of DHS at the end of the contract period. These steps shall include, at a minimum:
- 1) Complying with all of the data system security precautions listed in this Agreement or in an Exhibit attached to this Agreement;
  - 2) Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHS under this Agreement;
  - 3) Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
  - 4) Complying with the safeguard provisions in the Department's Information Security Policy, embodied in Health Administrative Manual (HAM), sections 6-1000 et seq., and in the Security and Risk Management Policy in the Information Technology Section of the State Administrative Manual (SAM), sections 4840 et seq., in so far as the security standards in these manuals apply to Business Associate's operations. In case of a conflict between any of the security standards contained in any of these four enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with DHS.

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- D. **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.
- E. **Business Associate's Agents.** To ensure that any agents, including subcontractors, to whom Business Associate provides PHI received from or created or received by Business Associate on behalf of DHS, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI, including implementation of reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI; and to incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents or subcontractors.
- F. **Availability of Information to DHS and Individuals.** To provide access as DHS may require, and in the time and manner designated by DHS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHS (or, as directed by DHS), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for DHS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHS health plans; or those records used to make decisions about individuals on behalf of DHS. Business Associate shall use the forms and processes developed by DHS for this purpose and shall respond to requests for access to records transmitted by DHS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- G. **Amendment of PHI.** To make any amendment(s) to PHI that DHS directs or agrees to pursuant to 45 CFR Section 164.526, in the time and manner designated by DHS.
- H. **Internal Practices.** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHS, or created or received by Business Associate on behalf of DHS, available to DHS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHS or by the Secretary, for purposes of determining DHS's compliance with the HIPAA regulations.
- I. **Documentation of Disclosures.** To document and make available to DHS or (at the direction of DHS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528.
- J. **Notification of Breach.** During the term of this Agreement:
- 1) **Discovery of Breach.** To notify DHS immediately by telephone call plus e-mail or fax upon the discovery of breach of security of PHI in computerized form if the PHI was, or is reasonably believed to have been, acquired by an unauthorized person; or within 24 hours by e-mail or fax of any suspected security incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the DHS contract manager, the DHS Privacy Officer and the DHS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notification shall be provided by calling the DHS ITSD Help Desk. Business Associate shall take:
    - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
    - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

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- 2) **Investigation of Breach.** To immediately investigate such security incident, breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, to notify the DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer of:
  - i. What data elements were involved and the extent of the data involved in the breach,
  - ii. A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data,
  - iii. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized,
  - iv. A description of the probable causes of the improper use or disclosure; and
  - v. Whether Civil Code sections 1798.29 or 1798.82 or any other federal or state laws requiring individual notifications of breaches are triggered.
  
- 3) **Written Report.** To provide a written report of the investigation to the DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
  
- 4) **Notification of Individuals.** To notify individuals of the breach or unauthorized use or disclosure when required under state or federal law and to pay any costs of such notifications, as well as any costs associated with the breach. The DHS contract manager, the DHS Privacy Officer, and the DHS Information Security Officer shall approve the time, manner and content of any such notifications.
  
- 5) **DHS Contact Information.** To direct communications to the above referenced DHS staff, the Contractor shall initiate contact as indicated herein. DHS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Agreement or Addendum.

<b>DHS Contract Manager</b>	<b>DHS Privacy Officer</b>	<b>DHS Information Security Officer</b>
See Provision 4 of Exhibit A for Contract Manager information	Privacy Officer c/o: Office of Legal Services California Department of Health Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Telephone: (916) 440-7750 Email: <a href="mailto:privacyofficer@dhs.ca.gov">privacyofficer@dhs.ca.gov</a>	Information Security Officer Information Security Office P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: <a href="mailto:dhsiso@dhs.ca.gov">dhsiso@dhs.ca.gov</a> Telephone: ITSD Help Desk 916-440-7000 or 800-579-0874

- K. **Employee Training and Discipline.** To train and use reasonable measures to ensure compliance with the requirements of this Addendum by employees who assist in the performance of functions or activities on behalf of DHS under this Agreement and use or disclose PHI; and discipline such employees who intentionally violate any provisions of this Addendum, including by termination of employment.

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**3. Obligations of DHS**

DHS agrees to:

- A. **Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHS produces in accordance with 45 CFR 164.520, as well as any changes to such notice. Visit this Internet address to view the most current Notice of Privacy Practices: <http://www.dhs.ca.gov/hipaa>.
- B. **Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. **Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that DHS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. **Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHS.

**4. Audits, Inspection and Enforcement**

From time to time, DHS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHS Privacy Officer in writing. The fact that DHS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHS's:

- A. Failure to detect or
- B. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHS's enforcement rights under this Agreement and this Addendum.

**5. Termination**

- A. **Termination for Cause.** Upon DHS's knowledge of a material breach of this Addendum by Business Associate, DHS shall:
  - 1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHS;
  - 2) Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible; or
  - 3) If neither cure nor termination is feasible, report the violation to the Secretary of the U.S. Department of Health and Human Services.
- B. **Judicial or Administrative Proceedings.** Business Associate will notify DHS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of

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HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.

- C. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHS (or created or received by Business Associate on behalf of DHS) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, shall continue to extend the protections of this Addendum to such information, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

**6. Miscellaneous Provisions**

- A. **Disclaimer.** DHS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- B. **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHS's request, Business Associate agrees to promptly enter into negotiations with DHS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA regulations or other applicable laws. DHS may terminate this Agreement upon thirty (30) days written notice in the event:
  - 1) Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHS pursuant to this Section or
  - 2) Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. **Assistance in Litigation or Administrative Proceedings.** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHS at no cost to DHS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

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- E. **Interpretation.** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
- F. **Regulatory References.** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. **Survival.** The respective rights and obligations of Business Associate under Section 6.C of this Addendum shall survive the termination or expiration of this Agreement.
- H. **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

## Exhibit H Glossary

As used in this Contract, unless otherwise expressly provided for, or the context otherwise requires, the following definitions of terms are specific to the construction of this Contract:

**Accreditation:** Accreditation is the process by which an impartial group provides recognition and certification to a group or organization that demonstrates and maintains the standards set by the accrediting organization.

**Administrative Model:** A federal set of rules that regulate funding for State Medicaid program services that are not direct medical services but are related to the administration and support of medical programs. This model does not require a State Plan Amendment or waiver(s) to implement.

**Administrative Case Management Services:** Services that include assistance in accessing a medical or other service, but does not include the direct delivery of the underlying service. Activities commonly understood to be allowable include: 1) assessment of the eligible individual to determine service needs, 2) development of a specific care plan, 3) referral and related activities to help the individual obtain needed services, and 4) monitoring and follow-up.

**Appeal:** A grievance process for resolving disputes.

**Asthma:** A condition often of allergic origin that is marked by continuous or paroxysmal labored breathing accompanied by wheezing, by a constriction of the chest, and often by attacks of coughing or gasping.

**Atherosclerosis:** a common arterial disorder characterized by yellowish plaques of cholesterol, lipids, and cellular debris in the inner layers of the walls of large and medium-sized arteries. The vessel walls become thick, fibrotic, and calcified, and the lumen narrows, resulting in reduced blood flow to organs normally supplied by the artery.

**Atherosclerotic Disease Syndromes:** a complex of signs and symptoms resulting from a common cause (Atherosclerosis) or appearing, in combination, to present a clinical picture of a disease or inherited abnormality. Examples include: ischemic heart disease, myocardial infarction, Angina pectoris, Atherosclerosis of the extremities.

**Beneficiary:** Any person certified as eligible for medical assistance under the Medi-Cal program.

**Case Management:** Any intervention undertaken with the purpose of helping a member receive appropriate care, whether post-acute or in lieu of acute care, where that Member has any disease(s) or condition(s). It is distinguished from utilization management in that it is voluntary.

**Case Management Fee:** An all inclusive monthly rate for DM services per enrolled DMPP member.

## Exhibit H Glossary

**Centers for Medicare and Medicaid (CMS):** The federal agency responsible for the administration of the Medicaid and Medicare programs.

**Chronic Disease:** Any ongoing physical, behavioral, or cognitive disorder, including chronic illnesses, impairments and disabilities. There is an expected duration of at least twelve (12) months with resulting functional limitations, reliance on compensatory mechanisms (medications, special diet, assistive device, etc) and service use or need beyond that which is normally considered routine.

**Chronic Obstructive Pulmonary Disease (COPD):** Disease process which causes decreased ability of the lungs to perform the function of ventilation. Diagnostic criteria include history of persistent dyspnea on exertion, with or without chronic cough, and less than one-half normal predicted maximum breathing capacity. Diseases which cause this are chronic bronchitis, pulmonary emphysema, chronic asthma, and chronic bronchiolitis.

**Code of Federal Regulations (CFR):** A codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government.

**Comorbidity:** Co-existing physical and/or behavioral conditions (usually chronic) that may affect overall health and functional status beyond the effect(s) of the condition under consideration.

**Coronary Artery Disease (CAD):** A narrowing of the small blood vessels that supply blood and oxygen to the heart. Coronary disease usually results from the build up of fatty material and plaque (atherosclerosis). As the coronary arteries narrow, the flow of blood to the heart can slow or stop. The disease can cause chest pain (stable angina), shortness of breath, heart attack, or other symptoms.

**Corrective Actions:** Specific identifiable activities or undertakings of the Contractor which address program deficiencies or problems.

**Contract Manager:** Person nominated by the Department to manage the day to day matters of the contract.

**Contractor:** The Disease Management Organization that contracts directly with the California Department of Health services for the work specified.

**Congestive Heart Failure (CHF):** An abnormal condition that reflects impaired cardiac pumping, caused by myocardial infarction, ischemic heart disease or cardiomyopathy.

**Corrective Action Plan/Period:** A detailed account of steps to be taken to correct identified deficiencies.

**Covered Services:** Those services provided to a Member or a contracted provider pursuant to the agreement between the Contractor and California Department of Health Services.

## Exhibit H Glossary

**Data Management manual:** a manual which describes each party's requirements for eligibility, data exchange, data formats, timeframes and other general specifications.

**Diabetes Mellitus (Diabetes) :** A complex disorder of carbohydrate, fat and protein metabolism that is primarily a result of a relative or complete lack of insulin secretion by the beta cells of the pancreas or of defects of the insulin receptors.

**Director:** Director of the California Department of Health Services.

**Disease Management (DM):** A system of coordinated healthcare interventions and communications for populations with conditions in which patient self-care efforts are significant. DM supports the physician or practitioner/patient relationship with a plan of care, emphasizes prevention of exacerbations and complications utilizing evidence-based practice guidelines and patient empowerment strategies, and evaluates clinical, humanistic, and economic outcomes on an ongoing basis with the goal of improving overall health.

**Disease Management Organization (DMO):** An organization possessing Disease Management accreditation from a nationally recognized source that provides disease management programs and services.

**Disease Management Pilot Program (DMPP):** The program authorized by Welfare and Institutions Code Section 14132.27 to test the efficacy of disease management in California's fee-for-service Medi-Cal population.

**Disenrollment:** The process by which a Member discontinues membership in the DMPP.

**Dual Eligible:** Persons who qualify for benefits under both the Medicaid and Medicare programs.

**Enrollment:** The process by which a potential Member becomes a Member of the DMPP.

**Evidence-Based Practice Guidelines:** Guidelines that contain systematically developed recommendations, strategies or other information to assist health care decision-making in specific clinical circumstances. These guidelines must have been produced under the auspices of a relevant professional organization (e.g., medical specialty, society, government agency, health care organization or health plan), and must have included a verifiable, systematic literature search and review of existing evidence published in peer-reviewed journal. The guidelines must be current and the most recent version (i.e., developed, reviewed or revised with the last five (5) years).

**Fee-for-Service:** Fee-for-service Medi-Cal is the traditional arrangement for health care in which providers are paid for each examination, procedure or other service that they furnish. Generally, beneficiaries may obtain services from any provider who has agreed to accept Medi-Cal payments. The Medi-Cal program employs a variety of "utilization controls" techniques (such as requiring prior authorization for certain services) designed to avoid costs for medically unnecessary or duplicative services.

## Exhibit H Glossary

**Federal Financial Participation (FFP):** A percentage of expenditures to be reimbursed by the federal government for medical assistance and for the administrative costs of the Medicaid program.

**Federally Qualified Health Center (FQHC):** A designation awarded under federal law to qualified public and non-profit health care entities, including safety-net clinics, which entitles these providers to enhanced Medicaid and Medicare reimbursement as well as participation in other federal programs.

**Implementation Period:** A four month period prior to the operational period designed to allow the Contractor to develop the necessary operational capabilities.

**Individual Treatment Plan (ITP):** A plan of care developed with member and provider participation, utilizing evidence based practice-guidelines to treat chronic disease conditions and comorbidities, to improve health outcomes and quality of life.

**International Classification of Diseases (ICD-9):** Physicians have been required by law to submit diagnosis codes for Medicare reimbursement since the passage of the Medicare Catastrophic Coverage Act of 1988. This act requires physician offices to include the appropriate diagnosis codes when billing for services provided to Medicare beneficiaries on or after April 1, 1989. The federal CMS designed the International Classification of Diseases, Clinical Modification (ICD-9) as the diagnosis coding system physicians must use.

**Liquidated Damages:** The amounts of monies specified in a contract to be awarded in the event that the agreement is violated.

**Joint Commission on Accreditation of Healthcare Organization (JCAHO):** An independent nationally recognized healthcare quality accreditation agency

**Marketing:** Any activity conducted on behalf of the Contractor where information regarding the services offered by the Contractor is disseminated in order to persuade potential Members to enroll.

**Medical Home:** A medical home is not a building, house or hospital, but rather an approach to providing comprehensive primary care. A medical home is defined as primary care that is accessible, continuous, comprehensive, family centered, coordinated, compassionate and culturally effective.

**Medical Record:** The Member's record maintained by the primary care provider.

**Medi-Cal:** Medi-Cal is California's version of the federal Medicaid program. Medi-Cal provides a scope of health care benefits for those who are low income and/or those who meet eligibility requirements. The California Department of Health Services is the Single Medicaid Agency responsible for the administration of Medi-Cal statewide.

**Medicaid:** The joint federal and state medical assistance program that is described in Title XIX of the Social Security Act. Medicaid is called Medi-Cal in California.

## Exhibit H Glossary

**Medicare:** A federal program, established in 1965, that pays for health care services for U.S. residents who are 65 or older, or who are permanently disabled.

**Member:** A Medi-Cal beneficiary who is enrolled in the Disease Management Pilot Program.

**Member Assessment:** A process by which the Contractor assesses Member health status and risk through various sources including, but not limited to, claims data, medical record review or the administration of a survey tool.

**Member's Record:** The record maintained by the Contractor. This record shall include, but not be limited to, member's eligibility, case management activities and utilization, benefits, and financial information.

**National Committee on Quality Assurance (NCQA):** An independent nationally recognized healthcare quality accreditation agency.

**Operational Period:** A three year period in which Members will be enrolled in the DMPP and DM services will be provided by the Contractor.

**Opt Out:** The process by which potential members decline participation in the DMPP.

**Outcome Measurement:** A measurement of the change resulting from an intervention.

**Phaseout Period:** A three month time period following the operational period during which necessary program information as specified by CDHS will be transferred from the Contractor to CDHS.

**Potential Member:** A beneficiary eligible for the DM benefit but not enrolled in the DMPP.

**Primary Care Provider (PCP):** A provider responsible for supervising, coordinating, and providing initial and Primary Care to patients and serves as the medical home for the Member. The medical home is where care is accessible, continuous, comprehensive and culturally competent.

**Proposer:** The prospective contractor.

**Protected Health Information (PHI):** Information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers and any financial identifiers.

**Provider:** Person, entity, facility, and institution licensed to provide health care services to Medi-Cal beneficiaries on a fee-for-service basis.

**Sanctions:** A penalty, or some coercive measure, intended to ensure compliance.

## Exhibit H Glossary

**Seniors and Persons with Disabilities (SPD):** formerly known as aged, blind, and disabled (ABD). A Medi-Cal beneficiary eligible for benefits through age, blindness, or disability, as defined in Title XVI of the Social Security Act (42 U.S.C. Section 1381 et. Seq.).

**Service Area:** The geographic area that the Contractor shall operate in under the terms of this Contract. A Service Area may have designated Zip Codes (under the U.S. Postal Service) within a county that are approved by the California Department of Health Services to operate under the terms of this Contract.

**Subcontract:** A written agreement entered into by the Contractor with any of the following: a) an entity, organization, or person(s) who agrees to provide DM covered services to Member(s), or b) any other organization or person(s) who agree(s) to perform any administrative function or service for the Contractor specifically related to fulfilling the Contractor's obligations to the California Department of Health Services under the terms of this Contract.

**Request for Proposal (RFP):** A competitive selection method used to procure complex professional services.

**Risk Stratification:** The process of classifying members into levels of risk based on claim experience and Member assessment performed by the Contractor.

**Rural Health Clinics (RHC):** A public or private hospital, clinic or physician practice designated by the Federal government as in compliance with the Rural Health Clinic Act (Public Law 95-210).

**Threshold Language:** Language that has been identified as the primary language, as indicated on the Medi-Cal Eligibility Data System (MEDS), of 3,000 beneficiaries within a county. Threshold languages for Alameda County include: English, Spanish, Vietnamese, and Cantonese. Threshold languages for Los Angeles County include: English, Spanish, Vietnamese, Cantonese, Mandarin, Armenian, Russian, Cambodian, Tagalog, Korean, and Farsi.

**Title XIX:** Title XIX of the Social Security Act and Amendments thereto, now codified at 42 United States Law 1396 et. Seq.

**Treatment Authorization Request (TAR):** A TAR is a confidential form submitted in writing by a Medi-Cal provider to request medical services for an eligible Medi-Cal beneficiary. It is the vehicle used in Medi-Cal's prior authorization system for providers to request services. The provider must submit completed medical justification with the TAR form because this document is the only item the Medi-Cal professional reviews.

**Utilization Monitoring (UM):** The process of tracking and trending the utilization of goods and services. The monitoring is intended to ensure that services provided are appropriate through various reporting methodologies.

**Utilization Review Accreditation Committee (URAC):** An independent nationally recognized healthcare quality accreditation agency. URAC is also known as American Accreditation Healthcare Commission Incorporated.